

# BRIEFING PACKET

**Connecticut Advisory Committee to the  
U.S. Commission on Civil Rights**



**Solitary Confinement in Connecticut  
February 7, 2017**

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**Connecticut Advisory Committee**  
**U.S. Commission on Civil Rights**

Old Judiciary Room  
Capitol Building  
210 Capitol Avenue  
Hartford, CT 06106

Tuesday, February 7, 2017  
10:00 a.m.

**AGENDA**

- *Welcome and Introductions*
- *Opening Remarks*
- *Briefing*

**Panel 1: Juvenile Panel Discussion**

Ms. Sarah Eagan, Child Advocate, Connecticut Office of the Child Advocate  
Dr. Bandy X. Lee, Professor, Yale University

**Panel 2: Mental Health Panel Discussion**

Dr. Reena Kapoor, Professor, Yale University  
Mr. Michael B. Mushlin, Professor, Pace University Elizabeth Haub School of

Law

Mr. Scott Semple, Commissioner, Connecticut Department of Corrections  
Dr. Homer Venters, Clinical Instructor, NYU School of Medicine

**Panel 3: Personal Testimony**

Solitary Survivor/Families

\*\*\*\* **Break** \*\*\*\*

**Panel 4: The Facts and the Law of Solitary Confinement: A National Picture**

Ms. Judith Resnick, Arthur Liman Professor of Law, Yale Law School  
Ms. Diana Li and Ms. Jessica Purcell, Students, Yale Law School

**Open Session – Public Testimony**

- *Closing Remarks*

## **Background: Solitary Confinement in Connecticut**

# Background

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## Overview of Solitary Confinement in Connecticut<sup>1</sup>

The number of current inmates in solitary confinement has fallen from 244 in 2003 to approximately 40. Special efforts have been made by Connecticut to decrease the amount of inmates in solitary confinement-generally referred to as "administrative segregation" in the state. While the number of prisoners in administrative segregation is decreasing in the state, eligibility criteria to be referred to administrative segregation remains broad and vague; steps to be discharged from the program are also vague and do not guarantee successful completion. Some advocates believe that inmates may be placed into administrative segregation due to an inability for the DOC to place these inmates into appropriate programs.

## Northern Correctional Institution

Northern CI is colloquially referred to as Connecticut's Supermax. It was completed in January of 1995 and received its first inmates in March of 1995. In 1995, Connecticut's death row inmates were moved to the Northern Correctional Institution from the Osborn Correctional Institution where they were previously housed. February of 1997 marked the arrival of the Chronic Disciplinary Unit. November of 1999 marked the arrival of the Special Risk Group Threat population. In November of 2000, the Chronic Disciplinary Unit was removed from the facility. In September of 2004, the Chronic Disciplinary Unit was returned to Northern CI.

In March of 2012, the Chronic Discipline Program was removed from Northern CI. This allowed for the successful closing on the 3 East Housing Unit. Also in the spring of 2012, Northern CI began moving forward with the proposed plans of removing the housing of all phases of Security Risk Group Threat Members. The transfer of these inmates to MacDougall- Walker CI, is scheduled to be completed by March of 2013. That will leave Northern CI with a forecasted inmate population of approximately 75 inmates (Phase 1 of Administrative Segregation, Special Needs and Death Row).

In July 2013, high bond inmates began transfers to Northern Correctional Institution. This was part of an extensive restructuring plan of the entire agency, in an effort by the administration to utilize its infrastructure and available bed space to

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<sup>1</sup>Referred to as "administrative segregation," "restrictive status," "restricted housing"

operate on a more efficient basis. This was accomplished while sustaining all inmate programming and providing opportunities for staff development.

## Administrative Segregation Program

The Connecticut Department of Correction primarily authorizes the following correctional institutions for participation in the administrative segregation program: "Northern, Garner and MacDougall-Walker (Walker Building) Correctional Institutions for adult males, Manson Youth Institution for youth males, and York Correctional Institution for females." Northern is the main site for adult males, and has a current population of 220 individuals.<sup>2</sup> The program consists of three phases, with a mandatory minimum length of 10 months. Connecticut DOC Directive 9.4 provides the methodology and definitions for administrative segregation. Per Directive 9.4, administrative segregation status is determined by "placement of an inmate on a restrictive housing status that results in segregation of the inmate whose behavior or management factors pose a threat to the security of the facility or a risk to the safety of staff or other inmates and that the inmate can no longer be safely managed in general population."<sup>3</sup> This stipulation provides broad criteria for the referral of inmates to administrative segregation. Directive 9.4 goes on to define multiple restrictive status categories: 1. Administrative Detention; 2. Punitive Segregation; 3. Transfer Detention; 4. Administrative Segregation; 5. Chronic Discipline; 6. (SRG Member); and, 7. Special Needs Management. 8. Special Circumstances Status.

Administrative Segregation is just one of these categories. Per the Yale students' NCI Briefing Paper, their study of the "special needs management" category closely, if not identically, mirrored the administrative segregation category. In their opinion, this second category was a way for prison officials to keep inmates at NCI once they were not part of the administrative segregation program. While an objective of the administrative segregation program at NCI is to develop coping skills for the inmates, attachment A/3 to Directive 9.4 states "All program opportunities shall be provided or arranged for in cell. Counseling programs shall be available on a limited basis."<sup>4</sup> While an aim of the DOC administrative segregation program is therapeutic in nature, the program remains suspect in its efficacy and ability to provide counseling and therapeutic services.

Current DOC Directive 9.4 outlines a general process of determining whether an inmate should be referred to administrative segregation. This process constitutes proper notification to the inmate in referral, as well as stipulates hearings,

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<sup>2</sup>Connecticut Department of Correction: Prisoner Statistics, <http://www.ct.gov/doc/cwp/view.asp?a=1492&Q=270036>.

<sup>3</sup>Department of Correction Administrative Directive 9.4.

<sup>4</sup>Department of Correction Administrative Directive 9.4, Attachment 3.

recommendations, and mental health clearance from a clinician. Yet, this formal process can take up to 30 days.<sup>5</sup> In the meantime, the inmate is placed in administrative detention, a proxy for formal administrative segregation, while the DOC determines if the inmate should be sent to administrative segregation. It is not clear if the time served in administrative detention can be deducted from the minimum 10-month program once formally referred.<sup>6</sup> An inmate can potentially wait for 30 days in administrative detention while simultaneously receiving a mental health evaluation that the inmate in question should not be placed in administrative segregation. In 2012, The American Psychiatric Association stated the "prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates." They defined prolonged segregation as a "duration of greater than 3-4 weeks."<sup>7</sup>

## Discrepancies in Administrative Segregation

While Connecticut has reduced administrative segregation, the administration of its program remains suspect. In November of 2016, The Association of State Correctional Administrators and the Arthur Liman Public Interest Program (ASCA-Liman) issued a joint report entitled "Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms." The ASCA-Liman report categorizes forms of solitary confinement as "restricted housing," and provides the prevalence of Connecticut inmates in restricted housing as mentioned previously (128 inmates; 0.8% of the inmate population; restricted housing referring to 15 consecutive days or longer, 22 hours or more per day). Per their report, only Hawaii has a lower prevalence than Connecticut of the use of restricted housing (out of 48 reported jurisdictions and states).<sup>8</sup> The total of 128 inmates is further broken down: 120 male inmates and 8 female inmates. Of male inmates in restricted housing, 23% are White, 57% are Black, 19% are Hispanic, and 2% are Asian. The total male inmate population is comprised of 32% White, 42% Black, 26% Hispanic (Asian is functionally 0%). For female inmates, the restricted housing population is 38% White and 63% Black. The total female inmate population is 54% White, 27% Black, 17% Hispanic, and 1% "other." The race discrepancies between these prevalences for both

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<sup>5</sup> "Description of Administrative Segregation and Close Custody Programs," Connecticut Department of Correction, <http://www.ct.gov/doc/lib/doc/pdf/northemascc.pdf> (last visited January 24, 2016).

<sup>6</sup> Department of Correction Administrative Directive 9.4

<sup>7</sup> American Psychiatric Association, Position Statement on Segregation of Prisoners with Mental Illness, December 2012.

<sup>8</sup> Association of State Correctional Administrators and The Arthur Liman Public Interest Program at Yale Law School, *Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms*, November 2016.

male and female inmates may indicate a non-uniform way in which restricted housing is applied to the inmate population.

## Conclusion

The Connecticut Department of Corrections has decreased its use of administrative segregation over the years. While the DOC has issued directives to clarify the use and criteria for administrative segregation, it is unclear whether there are strict criteria for applying administrative segregation. Furthermore, the DOC possesses alternative restrictive status categories that may approximate administrative segregation in application. The process for evaluating administrative segregation may allow for mental health clearance, but inmates are placed in administrative detention anyways for a period that may exacerbate----or worsen-their health status. Further evidence from the ASCA-Liman report shows the application of restricted housing may be affected by actual or perceived race of the inmate; Black women make up 27% of the total inmate population, but 63% of the inmates in restricted housing.

## **Panelist Biographies**

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### **Sarah Eagan, JD**

Child Advocate, Connecticut Office of Governmental Accountability

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#### **Biography**

**Sarah Eagan** was appointed by Governor Dannel Malloy to serve as Connecticut's Child Advocate on August 1, 2013. As Child Advocate, Sarah sets priority reviews for the OCA, manages office operations, and publishes vital information regarding the well-being of children and recommendations for system reform. Prior to this appointment, Sarah served for several years as the Director of the Child Abuse Project at the Center for Children's Advocacy in Hartford, Connecticut. During her years at the Center, Sarah worked to ensure that abused, neglected or special-needs children receive the safety, emotional support, services and education that they need and deserve. Sarah has represented numerous clients in trials, mediations, administrative matters and appeals. Sarah worked to improve service systems for children and their families through participation in various taskforces and working groups, addressing issues such as public access to juvenile proceedings and improving educational outcomes for children in state custody. Sarah has developed training curricula and conducted multiple seminars on education and child welfare law. Sarah has actively participated in drafting and seeking passage of legal reforms to improve outcomes for at-risk children and their families. Prior to working at the Center for Children's Advocacy, Sarah worked as a litigation associate at Shipman & Goodwin in Hartford, Connecticut. Sarah earned a degree in American Studies from Trinity College in Hartford, and went on to graduate with honors from the University of Connecticut School of Law.

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## **Reena Kapoor, MD**

Associate Professor of Psychiatry; Associate Program Director, Forensic Psychiatry Fellowship, Yale School of Medicine

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### **Biography**

Dr. Kapoor is Associate Professor of Psychiatry in the Law & Psychiatry Division, where her clinical work and scholarship focus on the intersection between serious mental illness and the criminal justice system. She has expertise in correctional psychiatry, community treatment of persons with criminal justice involvement, and management of problematic sexual behaviors. In addition, she serves as Associate Program Director for the Yale forensic psychiatry fellowship, teaching and supervising fellows in the country's largest training program for forensic psychiatrists. Dr. Kapoor has lectured widely on forensic psychiatry and holds leadership positions in several professional organizations. She is President of the Connecticut Psychiatric Society, serves as Connecticut's representative to the American Psychiatric Association Assembly, co-founded the Community Forensics committee of the American Academy of Psychiatry and the Law (AAPL), and is President-Elect of the International Association for Forensic Psychotherapy. Prior to joining the Law & Psychiatry faculty, Dr. Kapoor completed her residency training in psychiatry at Harvard Medical School and a forensic psychiatry fellowship at Yale. She is a 2003 graduate Northwestern University's Feinberg School of Medicine.

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**Bandy X. Lee, MD, MDiv**

Lecturer; Assistant Clinical Professor, Yale School of Medicine

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**Biography**

Dr. Bandy Lee is a violence studies specialist. Trained as a psychiatrist at Yale and Harvard Universities, she focused on public-sector work as chief resident and on anthropological research in East Africa as a fellow of the National Institute of Mental Health. In addition, she worked in several maximum-security prisons throughout the United States, consulted with governments in Ireland and France, and helped to set up violence prevention programs both in the U.S. and abroad. She is currently on the faculty of the Law and Psychiatry Division and teaches students representing asylum seekers or studying to become public defenders at Yale Law School. She also served as Director of Research for the Center for the Study of Violence, as consultant to the World Health Organization and several other United Nations agencies. Her interests are in global health approaches to violence prevention and interdisciplinary discourse.

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## Michael B. Mushlin, JD

Professor of Law, Elisabeth Haub School of Law, Pace University

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### Biography

Michael B. Mushlin is a professor of law at the Elisabeth Haub School of Law at Pace University. Currently he is visiting professor of law at the Touro Law Center, and previously was visiting professor of law at Brooklyn Law School. He is the author of **RIGHTS OF PRISONERS** (West 4<sup>th</sup> Ed.), a four volume treatise and articles, chapters and op-eds on prisoners' rights and other topics including children's rights, civil procedure, evidence and federal courts. Professor Mushlin is a board member and past chair of the Correctional Association of New York, past chair of the Osborne Association, and the Corrections Committee of the New York City Bar Association where he co-chaired an investigation into conditions on New York's death row. He is the co-chair (with Michele Deitch) of the ABA subcommittee on Correctional Oversight and a member of the American Bar Association's Task Force on the Legal Status of Prisoners which the ABA's *Standards on the Treatment of Prisoners* adopted by the House of Delegates in 2010. Professor Mushlin practiced law as a legal services lawyer in Harlem and as a civil rights lawyer with the New York City Legal Aid Society and the American Civil Liberties Union. Professor Mushlin was Associate Dean for Academic Affairs, James D. Hopkins Professor of Law, and Charles A. Frueauff Research Professor of Law. He currently serves on the Advisory Committee on Criminal Law and Procedure to the New York State Judiciary.

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## Judith Resnik, JD

Arthur Liman Professor of Law, Yale Law School

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### Biography

Judith Resnik is the Arthur Liman Professor of Law at Yale Law School, where she teaches about federalism, procedure, courts, prisons, equality, and citizenship. Professor Resnik is the founding director of Yale's Arthur Liman Program and Fund, supporting fellowships for law graduates and for undergraduates at certain colleges, and sponsoring colloquia and seminars on the civil and criminal justice systems. From its inception in 1997 through 2016, 115 graduates of the Yale Law School have held Liman Fellowships. During the past few years, the Liman Program has been working on a series of projects related to the isolation of individuals in prison -- in terms of both the geographical placements of prisons and the rules under which prisoners live. In 2015, the Liman Program joined with the Association of State Correctional Administrators in co-authoring *Time-in-Cell: The Liman-ASCA 2014 National Survey of Administrative Segregation in Prison*. The report is the first to provide updated information, as of the fall of 2014, on both the numbers of people and the conditions in solitary confinement nationwide. Professor Resnik has chaired the Sections on Procedure, on Federal Courts, and on Women in Legal Education of the American Association of Law Schools. She is a Managerial Trustee of the International Association of Women Judges. Professor Resnik served as a founder and for more than a decade as a co-chair of Yale University's Women Faculty Forum, begun in 2001.

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## **Scott Semple**

Commissioner, Connecticut Department of Corrections

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### **Biography**

In 2015, Gov. Dannel P. Malloy nominated Scott Semple to serve as commissioner of the state Department of Correction. In announcing the nomination, Gov. Malloy cited Semple's work supervising and treating inmates with mental health needs and his experience with the department, which began in 1988 as a corrections officer. Scott has extensive experience and knowledge of the inner workings of the Connecticut Department of Correction, including a number of years serving as a frontline corrections officer, gaining a broad familiarity on best practices in handling offenders and finding ways to reduce recidivism. Scott Semple has been acting commissioner since James E. Dzurenda retired in August 2014. Before that, he was a deputy commissioner, warden of Garner Correctional Institution and a frontline officer at Cheshire Correctional Institution.

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## **Homer D. Venters, MD, MS**

Chief Medical Officer, Assistant Vice President at NYC Health and Hospitals Corporation; Clinical Instructor, Department of Medicine, NYU Langone Medical Center

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### **Biography**

Dr. Venters serves as the Chief Medical Officer for Correctional Health Services in New York, a position he has been in since August of 2015. Dr. Venters is also a clinical attending physician at NYU Langone Medical Center, and works at the NYU Center for Health and Human Rights. He previously served as the Assistant Commissioner for Correctional Health Services, and was the Medical Director for the New York City Department of Health and Mental Hygiene. Dr. Venters has written extensively and conducted research on issues relating to incarceration and health and mental health.

## **Selected Panelist Writings**

## **Panelist Selected Writings**

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### **Sarah Eagan, JD**

Child Advocate, Connecticut Office of Governmental Accountability

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**Selected writing, reproduced here in part. Citation and full article accessible:**

Eagan, S. Too Many Students Face Restraint, Seclusion. The Hartford Courant, March 28, 2014.

<http://www.courant.com/opinion/op-ed/hc-op-eagan-restraints-seclusion-connecticut-scho-20140328-story.html>.

A 6-year-old was confined in seclusion in his elementary school, a high school student was held face down in a parking lot by a number of adults and another child, placed in seclusion, was told to use a bed pan to urinate.

Over the last three months, the Office of the Child Advocate received a number of reports like these on the use of restraints and seclusion in our schools, particularly on children with disabilities.

We were told of seclusion rooms that have scratches on the door from children who were placed inside. We were sent pictures of seclusion rooms with concrete walls, metal doors and small, square windows up high.

According to a February report from the state Department of Education, children with disabilities were restrained or placed in seclusion rooms more than 33,000 times in the last school year. The majority of these children were in elementary school. Shockingly, almost 400 of these cases occurred in preschool. These children are mostly boys, often children of color and many of them are on the autism spectrum.

The numbers are likely higher. Some districts report little or nothing to the education department, including the Hartford Public Schools.

More than 6,000 occurrences of restraint or seclusion lasted more than 20 minutes, and 1,000 incidents lasted over an hour. Forty children were restrained or secluded more than 100 times in a single school year.

Although there may be times when holding children is the only way to protect them from harming themselves or others, there is growing evidence that these practices are counter-productive and traumatic, rather than therapeutic or effective behavior intervention. A 2009 Government Accountability Office Report to Congress documented numerous cases

of abuse and death related to the use of seclusion and restraint on schoolchildren during the past two decades.

The law does not count brief holds to calm or comfort a struggling child as a "restraint." Nor is a "time out" considered "seclusion," which is legally defined as confinement of children a separate room.

Significantly, federal health care law prohibits the use of standing orders for restraint or seclusion in treating children. Accordingly, in Connecticut, the departments of Children and Families, Mental Health and Addiction Services and Developmental Disabilities all have methods to prevent use of restraint and seclusion. These agencies work with children or young adults who may have profound cognitive, psychiatric or neurologic challenges.

Unfortunately, federal health care law does not govern schools. Connecticut schools are permitted to have standing orders for seclusion of children. Seclusion is a blunt, potentially traumatizing and ineffective tool for children who need individualized and expert educational planning. The only explanation for the tens of thousands of incidents reported in Connecticut schools is that restraint and seclusion are systematically used in behavior modification.

Seclusion and restraint of children is a public health challenge. We must bridge the gap between children's health care and their education. Schools must have the resources and expertise to educate children with complex challenges. Many schools do not even have a social worker on staff, much less a behaviorist, neuropsychologist or developmental specialist. We cannot talk about access to children's mental health care without addressing the need for schools to be more effectively connected to community systems of care.

The U.S. departments of Health and Human Services and Education have heralded positive behavioral support programs and the Six Core Strategies as effective in improving treatment or school climates, addressing problem behaviors in schools, and reducing unnecessary restraint and seclusion. Some Connecticut programs are making great strides with these models.

We should require evidence-based interventions in our schools, not just for literacy development, but for social-emotional and behavioral well-being. We must require meaningful training, transparency of school practices and mandated debriefing for children who are subject to repeated restraint or seclusion.

Children have the right to effective education provided in the least restrictive manner. Parents have the right to send their children to school without fear that their child — already vulnerable in the world, potentially limited in communication or even non-verbal — will be locked in a room, particularly when there is nothing to suggest that this works. And teachers have the right to do their work in a supported environment, free from injuries often caused by forced escort or restraint.

No child, much less a child with a significant disability, should be permitted to be restrained or secluded more than 100 times in a school year.

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## Reena Kapoor, MD

Associate Professor of Psychiatry; Associate Program Director, Forensic Psychiatry Fellowship, Yale School of Medicine

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### **Selected writing, reproduced here in part. Citation and full article accessible:**

Kapoor R. Taking the Solitary Confinement Debate Out of Isolation. *J Am Acad Psychiatry Law*, 42: 2-6, 2014. <http://jaapl.org/content/42/1/2.long>

The use of solitary confinement, particularly with mentally ill prisoners, has become a central focus of prison reform efforts in recent years. Numerous articles in the scholarly literature and popular media have chronicled the experiences of prisoners placed in long-term isolation, shining a spotlight on the growing use of the practice and its detrimental effects.<sup>1-3</sup> This media attention has served to raise public consciousness about the potential harms of solitary confinement, and, in conjunction with lawsuits filed against prison systems, has formed the basis of the Stop Solitary movement in the United States. By 2013, the movement had grown to involve, not only prisoners and civil liberties advocates, but also corrections officials,<sup>4</sup> religious leaders,<sup>5</sup> professional organizations,<sup>6</sup> and international human rights experts.<sup>7</sup>

Psychiatrists and psychologists have played an essential role in the Stop Solitary movement, giving legitimacy to what could have been dismissed as frivolous complaints by prisoners. Initial psychiatric studies focused on clinical observations, documenting the feelings of loneliness, confusion, and agitation associated with long-term isolation.<sup>8</sup> More recent studies have found a higher incidence of suicide and self-injury in restrictive housing settings,<sup>9</sup> as well as a disproportionate number of prisoners with serious mental illness placed in isolation.<sup>10</sup> The 2012 publication of an American Psychiatric Association (APA) position statement on solitary confinement reflected a professional consensus that long-term isolation is harmful to prisoners with serious mental illness, either by directly causing clinical deterioration or by depriving them of treatment that would have resulted in improvement.<sup>6</sup> Although some scholars debate whether isolation is the cause or effect of the dangerous behavior observed in prisoners housed in isolation,<sup>11</sup> it is clear that, at the very least, isolation adds no benefit to the treatment of mental illness in prison.

The mounting body of medical literature documenting the effects of solitary confinement has enhanced the ability of prison reform advocates to bring legal challenges against its use in mentally ill prisoners. Numerous lawsuits and CRIPA (Civil Rights of Institutionalized Person Act of 1980) investigations have alleged that long-term isolation, typically defined as greater than 22 hours per day of in-cell confinement, violates prisoners' constitutional rights.<sup>12-14</sup> These legal challenges have been relatively successful, as courts have agreed that placing mentally ill prisoners in long-term solitary confinement violates the Eighth Amendment prohibition against cruel and unusual punishment.<sup>12-14</sup> As one decision noted, placing mentally ill prisoners in isolation “is the

mental equivalent of putting an asthmatic in a place with little air....”<sup>12</sup> In another decision, the court stated that “long periods of solitary confinement can have devastating effects on the mental well-being of a detainee.”<sup>15</sup>

As a result of litigation, conditions in some correctional systems have improved dramatically for inmates with mental illness. States such as Colorado, Maine, Mississippi, Virginia, and Illinois have significantly reduced the use of solitary confinement, while saving money and experiencing no increase in rates of violence.<sup>16</sup> Other states are following their examples. While more work undoubtedly remains to be done, legal challenges to solitary confinement have created an important avenue for initiating reforms to improve care of mentally ill prisoners.

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## **TOO NARROW A FOCUS?**

A cursory glance at media coverage of prisons could easily lead one to conclude that solitary confinement is the single worst thing that happens to inmates with mental illness in correctional settings. Many articles make no mention of other serious problems with access to mental health care in prisons, such as chronic understaffing, lack of screening for mental illness, inadequate training for corrections officers, and poor coordination between community and correctional health services. Presumably, the stories of individual inmates and their psychological deterioration in solitary confinement are so powerful that they need not be supplemented with additional facts.

This approach has been helpful in building coalitions, as many different groups can resonate with the narratives of individual inmates and come together in support of stopping solitary confinement. However, it has also greatly intensified the focus on one particular topic (the use of isolation) at the expense of other important aspects of improving prison health care. For example, if a prisoner with serious mental illness has never been placed in solitary confinement, but has no access to meaningful mental health care, is he not also worthy of advocacy efforts? Furthermore, would all of the problems of mentally ill prisoners be solved if those inmates were simply removed from isolation units?

To be fair, the focus of media and legal advocates on a particular aspect of prison life is nothing new; past coverage has tackled such concerns as sexual violence or the plight of incarcerated mothers.<sup>17,18</sup> Similarly, the focus of prison litigation has undergone cycles in which a particular topic is more or less popular: overcrowding, excessive use of force, and health care. These areas of interest are, of course, based on the goals of the media (to provide interesting content to viewers or the readership) and the legal advocates (to create the strongest case for litigation). The accounts are not meant to be exhaustive renderings of the many harms of prison or even a complete report of the harms encountered by persons with mental illness in prison.

As psychiatrists, we have a different mandate to advocate for improving all aspects of mental health care in correctional settings. We can and should consider the effects of

solitary confinement, but we should do so with a goal of integrating changes to isolation practices into larger reform efforts to improve the system of prison mental health care. To date, we have made important progress in this area, particularly with the creation of standards for correctional health care and position statements against the use of prolonged isolation on patients with mental illness.<sup>6,19,20</sup> As a profession, we have stated with clarity that persons with mental illness deserve high-quality treatment, regardless of their status as prisoners.<sup>19</sup> Furthermore, we have stated that prisoners with mental illness are particularly vulnerable, and the use of the most extreme forms of punishment should be avoided with them.<sup>6</sup>

Where we must work harder, however, is in delineating the many ways in which solitary confinement harms prisoners with mental illness. Much of our attention has so far been focused on the fairly narrow question of whether a healthy person will develop mental illness (the so-called SHU (special housing unit) Syndrome) if placed in solitary confinement. Studies about this subject have yielded conflicting results, some concluding that long-term isolation causes a delirium-like syndrome<sup>21</sup> and others finding that previously healthy people are likely to remain healthy.<sup>11,22</sup> In trying to explain these conflicting results, scholars have criticized each other for using flawed methodologies or demonstrating bias, even going so far as to label particular studies as “garbage.”<sup>23</sup> The subject remains a hotly contested area of scholarly debate, and further research is being undertaken.

Although the question of whether solitary confinement creates mental illness in otherwise healthy people is certainly important from a scientific perspective, there is also value in taking a step back and considering the harms of solitary confinement in a broader sense. For example, even if we prove conclusively that solitary confinement does not harm healthy individuals, there are still many ways in which persons with mental illness are harmed by those conditions. As psychiatrists, we should study all of the problems associated with the continued use of solitary confinement in prisons, moving beyond the question of SHU syndrome and advocating for the broader needs of our patients.

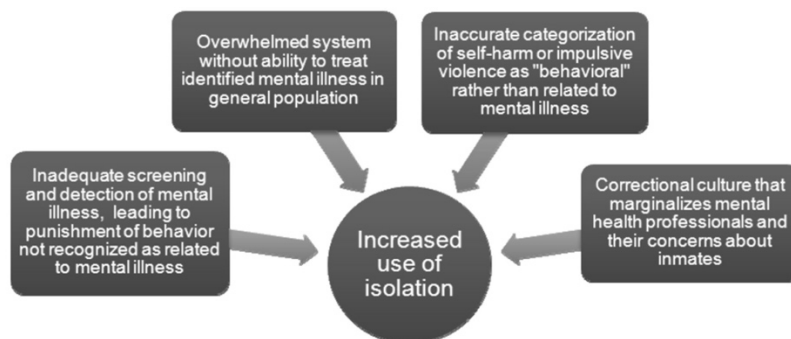
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## **REFRAMING THE SOLITARY CONFINEMENT DISCUSSION**

In considering the broad-based harm of solitary confinement, some legal advocates have made the connection between solitary confinement and other harmful conditions for mentally ill prisoners. Class-action suits alleging constitutional violations typically include the use of solitary confinement as one of the harms, but not the only harm, perpetrated by the prison system with regard to mental health care. For example, in *Gamez v. Ryan*,<sup>24</sup> solitary confinement was identified as one element of a grossly inadequate medical system in Arizona. In *Madrid v. Gomez*,<sup>12</sup> placement of individuals with mental illness in isolation was included as part of a larger effort to eliminate the use of excessive force in California's supermax facilities. These cases demonstrate how legal advocates use solitary confinement as a starting point, but with the ultimate strategy of creating broader changes in prison conditions.

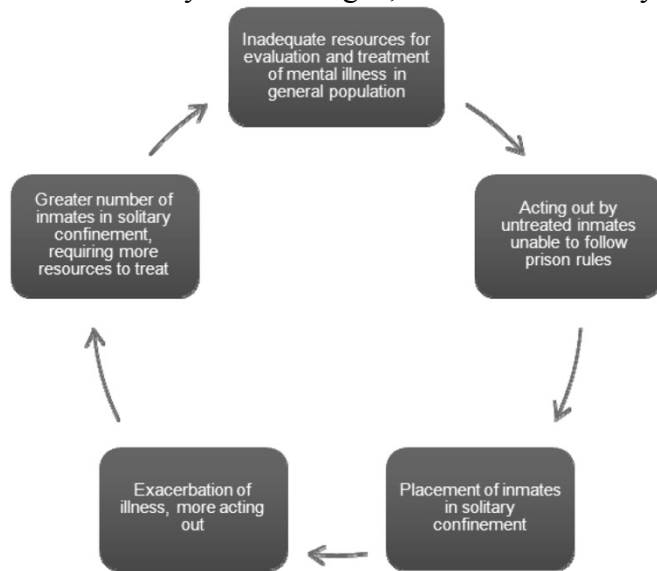
Madrid v. Gomez and Gamez v. Ryan provide a model of integrating the topic of solitary confinement with other prison conditions, and a recent U.S. Department of Justice (DOJ) investigation offers a model for examining the multifactorial harms of solitary confinement itself. In its investigation of a Pennsylvania correctional facility, DOJ created a three-part framework for examining the effects of solitary confinement on individuals with mental illness.<sup>25</sup> First, the investigators considered the direct effects of solitary confinement on mental health: both the SHU syndrome and the exacerbation of other mental illnesses. Second, they examined the lack of access to mental health care created by placement in segregation, such as the inability to participate in group or individual psychotherapy. Third, they addressed the combination of isolation with other harsh conditions of confinement, such as the excessive use of force or unclean living conditions. By focusing not only on the narrow question of whether solitary confinement can cause mental illness de novo, DOJ included other important systemic concerns about the prison in its investigation: understaffing, marginalization of mental health staff, inadequate oversight, and others. Solitary confinement was presented not just as a harm in itself, but also as the final common pathway in a grossly inadequate mental health system.

**Figure 1** illustrates this concept in more detail. Many factors lead to the increased use of isolation of mentally ill inmates. First, inadequate screening for mental illness allows many inmates to go undiagnosed, and behavior that is related to mental illness will be punished with placement in isolation rather than treated with medication or psychotherapy. Even if inmates are appropriately identified as mentally ill, providing inadequate resources to treat them ultimately leads to the same result. A professional culture in which mental health professionals are encouraged to label inmates as “behavioral” rather than truly ill can also contribute to the increased use of isolation. Finally, an environment in which the concerns of mental health staff are overshadowed by those of security staff can lead to the increased placement of inmates in isolation, either because mental illness is not recognized or as retaliation against mental health staff who are perceived as inmate lovers.



**Figure 1.** Solitary confinement as a final common pathway in inadequate correctional mental health systems.

The relationship between solitary confinement and mental illness can also be viewed as a cycle. As illustrated in **Figure 2**, placement in solitary confinement feeds on itself, requiring ever-increasing resources to care adequately for the needs of inmates in that setting. For example, as inmates with mental illness are placed in solitary confinement, they need intensive monitoring to assess whether they are deteriorating. The resources used to perform this monitoring must be diverted from elsewhere, typically from general population services. In addition, in cases where inmates deteriorate in isolation, care must be provided for them in an intensive (typically inpatient) mental health setting. Further resources are used in this endeavor, thereby decreasing once again the ability to provide treatment in the general population. The end result is that preventive and routine services are continually short-changed, with resources only available for a response to crises.



**Figure 2.** Cycle of Solitary confinement and mental illness.

Framing the discussion about the effects of solitary confinement in this larger context is essential, as doing so provides an opportunity to address other serious needs of prisoners with mental illness. Taking such an approach can even appeal to the professional pride of corrections officials, encouraging innovation and program development in mental health care that will ultimately lead to the reduced use of isolation. Finally, expanding the discussion about solitary confinement makes it clear to prison systems that they are accountable for changing the underlying conditions that result in overreliance on isolation as a management tool, not just engaging in a shell game of moving prisoners with mental illness into different (often temporary) housing units.

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## **STOPPING SOLITARY CONFINEMENT IS JUST THE BEGINNING**

As psychiatrists, we must not be myopic in our focus on advocating for our patients in correctional settings. We must acknowledge that, sadly, many appalling things still routinely happen in prison to individuals with mental illness, and placement in solitary confinement is just one of them. Every day, prisoners receive substandard treatment of

serious mental illnesses. Correctional systems have inadequate resources to provide necessary care, and health care professionals too often stray from their therapeutic mandates, becoming hardened after years of witnessing prisoners manipulate the system. The unfortunate result is that prisoners are frequently misdiagnosed, denied access to treatment, and punished rather than helped by those responsible for caring for them.

Because of these challenges, many private and public agencies have developed programs to divert persons with mental illness from incarceration in recent years.<sup>26</sup> We now have widespread recognition that prison is not the ideal setting in which to treat mental illness, and we take steps to reduce the incarceration of mentally ill people when possible. Nonetheless, a significant section of the prison populations still has mental illness and cannot be diverted to another setting. For those people, we must advocate first for removing them from the harshest forms of punishment, such as solitary confinement, and then for improving their access to treatment more broadly.

As we move forward in promoting improved prison mental health care, we must remember that the use of solitary confinement does not occur in a vacuum; it is almost always related to other systemic deficiencies. By framing the problem of solitary confinement as a final common pathway for prisoners stuck in inadequately developed correctional mental health systems, we can create meaningful systemic change. Simply removing prisoners with mental illness from isolation is insufficient. Real reform requires improving the entire system of mental health care in prisons.

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## **Bandy X. Lee, MD, MDiv**

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### **Selected writing, reproduced here in part. Citation and full article accessible:**

Lee B., Prabhu M. A reflection on the madness in prisons. *Stanford Law and Policy Review* 26: 253-268, 2015. [https://journals.law.stanford.edu/sites/default/files/stanford-law-policy-review/print/2015/04/lee\\_prabhu\\_26\\_stan\\_l.\\_poly\\_rev\\_253.pdf](https://journals.law.stanford.edu/sites/default/files/stanford-law-policy-review/print/2015/04/lee_prabhu_26_stan_l._poly_rev_253.pdf).

### **III. THE MENTAL EFFECTS OF DOUBLE INCARCERATION OR ISOLATION**

Still, negative human contact within prisons is better than no contact. Isolation is significant in the lives of mentally ill inmates, who are more likely to spend time in solitary confinement. Only 60% of those with mental illness are noted to receive treatment while under incarceration,<sup>25</sup> but while in isolation, access to care is even more difficult. Mental illness by nature is often very painful: imagine hearing threatening voices that one cannot block out; creating delusions to try to explain the overwhelming fear that appears for no reason; experiencing clinical depression that makes suicide seem a desirable relief; or incessantly reexperiencing the terrible trauma that caused illness in the first place, as a symptom of the illness. Physical illness can be blocked out by the mind; mental illness afflicts the mind itself. Allowing mental illness to grow severe enough as for the afflicted to deny illness, to refuse treatment, and—as we are increasingly observing—to become violent, is one of the ways in which society has shown neglect. Solitary confinement also has been noted to induce a “psychiatric syndrome” in previously healthy individuals.<sup>26</sup> The stress of these circumstances bears out in a study of Rikers Island records between 2010 and 2013: of all inmates, 7.3% of inmates were placed in solitary confinement at some point, but that small population accounted for 53.3% of all the acts of self-harm (over 1000 acts).<sup>27</sup>

There is a long history behind the research regarding possible psychological and physiological harm resulting from solitary confinement, dating back to the 1860s.<sup>28</sup> The first comment by the U.S. Supreme Court, about solitary confinement’s effects of reducing mental and physical capabilities, was made in 1890.<sup>29</sup> The Quakers had advocated for it with the best intentions in order to provide the prisoner with solitude “to reflect upon his misdeeds” and to restore his relationship with God.<sup>30</sup> However, the dysfunction of this model was already evident soon after their institution, causing prisons to close down or to change approaches altogether on the basis that the particularly austere conditions did not have any discernible effect on crime, while prisoners became more unruly and insane.<sup>31</sup> Visitors of U.S. prisons—including Alexis de Tocqueville and Charles Dickens—arrived as avid advocates of prison reform but left denouncing the method of isolation. De Beaumont and de Tocqueville wrote, “[T]his absolute solitude, if nothing interrupt it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not reform, it kills. . . . [F]ive of them, had already

succumbed . . . .”<sup>32</sup> Dickens wrote, “I believe it, in its effects, to be cruel and wrong . . . .”<sup>33</sup>

Isolation can be more harmful than negative human contact because human beings are neurologically and psychologically social animals. Social contact is like oxygen or food: we do not notice how essential it is until we have known suffocation or hunger. Isolation has been described to be as difficult, if not more, to withstand than physical torture.<sup>34</sup> When inmates request isolation themselves, intending to get away from the very real threat of attack that is the daily life in prisons, they do not anticipate how agonizing solitary confinement can be when it comes to persist for weeks, months, years, or even decades, as it is practiced in this country. When correctional staff administers solitary confinement not for punishment but for protection, say, of inmates who are at risk of being assaulted for their mental illness, they may not recognize the additional harm they are afflicting, even to the patient who is paranoid and already isolating oneself. It is important to note that, like many psychological interventions, isolation is not without controversy, as human beings are resilient and responses can widely vary. However, regardless of arguments of improved methodology, the handful of studies<sup>35</sup> that show little harmful effect are often too small in sample size, never definitive (since randomized controlled trials, the gold standard for determining causality, are extremely difficult to do in this setting), and too few in number to counter the vast documentation of the damaging effects of social and sensory deprivation (this literature is quite sizeable, spanning over 150 years, and too numerous to be all-inclusive in any short paper such as this one).<sup>36</sup>

Whether and how isolation damages individuals’ mental health depends on duration, circumstances, and personal characteristics, but for many the effects are substantial—for some, even after short periods of confinement. This is not surprising given our human makeup: continually emerging neuroscientific evidence reveals that human beings, having an almost explosive growth in brain cells compared to our next of kin in primates, are by far the most social among them.<sup>37</sup> The highly developed and enormous frontal brain in human beings makes social input crucial to our development and survival. Numerous sensory deprivation and perceptual deprivation studies have revealed that isolating people and severely restricting sensory stimulation can provoke drastic reactions and symptoms—even after a duration of hours or days—including, for example, hallucinations, confusion, lethargy, anxiety, panic, time distortions, impaired memory, and psychotic behavior.<sup>38,39</sup> Social deprivation, furthermore, is considered to be a prominent factor in a variety of mental diseases, without counting poverty, inequality, and other societal deprivations that are strongly linked with mental illness.<sup>40</sup> Additionally, the social and sensory deprivation characteristic of solitary confinement is often compounded by confusing or distressing abnormal sensory stimulation (inmates may shout or speak through ventilation systems in order to relieve themselves of the isolation, which in turn creates a cacophony of disembodied sounds that one cannot block out, like the voices in one’s head).

The flip side of the malleable human brain is that while it may offer resilience from harm in some instances, it can be permanently negatively shaped in others. The last few decades of neuroscientific research has revealed that the human brain continues to be shaped well into a person’s mid-twenties, with the greatest growth and development in the first years of life and a second phase in adolescence.<sup>41</sup> This has shed new light on how lifelong illnesses, such as schizophrenia and bipolar disorder, most often have their onset

during adolescence or early adulthood (commonly 17 to 21 for men and 25 to 29 for women). Therefore, the situation of placing this age group under the stressful conditions of solitary confinement, in addition to imprisonment, becomes a practice of illness generation. Even in the absence of major mental illness, youth at this critical stage of brain development require social stimulation for proper growth and are vulnerable to behavioral, emotional, and interpersonal problems if those needs are not met. Thus affecting youth, prisons and imprisonment within prisons at massive scale become a powerful influence on the future of our society. Yet the United States incarcerates more of its youth than any other country in the world, exposing them to isolation more than any other age group (for example, in 2012, 14.4% of all adolescents between 16- and 18-years-old were held in solitary confinement at some point while detained in Rikers Island).<sup>42</sup> Solitary confinement thus is the extreme end of the general pathology of prisons.

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## Michael B. Mushlin, JD

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**Selected writing (1/2), reproduced here in part. Citation and full article accessible:**

Mushlin, M. Breeding Psychotics. The New York Times, March 27, 2005.

<http://www.nytimes.com/2005/03/27/opinion/nyregionopinions/breeding-psychotics.html>

As the State Legislature considers reinstating the death penalty, lost in the debate is any mention of the appalling conditions that are often inflicted on prisoners sentenced to death.

Since the death penalty was re-enacted during Gov. George E. Pataki's first term, seven people have been condemned to die, but none have been executed. Prisoners on death row have been kept in virtual solitary confinement while they await the outcome of their appeals, exoneration or execution. A recent study by the Association of the Bar of the City of New York, of which I am a co-author, has found that the conditions on New York's death row are among the harshest in the nation.

According to the study, each condemned man in New York is locked in his isolated 78 square-foot space for 23 hours each day. Each cell contains only a toilet, a sink, a bed, a mattress and a pillow. The cells are not air-conditioned and fans are not permitted. All meals are given to inmates in their cells during the daytime shift, which means that inmates go more than 16 hours without food. The inmates cannot see other prisoners from their cells and are not permitted to hold prison jobs, attend programs or engage in organized activities. When a prisoner is allowed out of his cell for his one hour a day, he is confined to a solitary cage of about 2,000 square feet, aptly called a dog run.

Compounding the isolation, visits are greatly restricted and take place in booths separated by a plexiglass barrier that prevents physical contact. Inmates are limited to two 10-minute phone calls per week.

Judge James L. Dennis of the United States Court of Appeals for the Fifth Circuit, in New Orleans, has said that restrictive death row conditions are "enough to weaken even the strongest individual." Psychologists who have studied such conditions have concluded that they can lead to severe psychological consequences, including withdrawal, hopelessness, hallucinations, aggression, rage, paranoia and psychosis.

Death row inmates who may be rendered insane by these conditions may no longer be deemed competent when the time comes to execute them. There is also the possibility that inmates will be driven by these conditions to abandon their

appeals and volunteer for execution, a phenomenon that occurs with more than 10 percent of all inmates on death row nationally.

And, of course, some prisoners subjected to these conditions might actually be innocent -- last month, an Ohio inmate who was convicted in 1985 became the 119th innocent person to be freed from death row since 1973.

Not only are conditions harsh, but the state is also highly secretive about how it runs death row. The Department of Correctional Services has refused to open death row to inspection even to representatives of the New York City bar association asserting undefined security concerns. When the death penalty law was passed, the Legislature and Governor Pataki gave the department the authority to close death row to inspection by judges, members of the Legislature, district attorneys, ministers in towns where prisons are located and even by the governor himself.

Inmates on death row are not the only ones who must endure these horrible conditions. New York confines approximately 5,000 other inmates by locking them into their cells for 23 hours a day. Approximately 2,800 of these inmates are housed in disciplinary lockdown units, some of which approach the severity and degree of isolation of the notorious "supermax" prisons in other states.

The conditions in these units are analogous to those on death row. The toll exacted by these conditions has not been fully calculated, but some things are known. A recent review of public data by lawyers from the Prisoners' Rights Project of the New York Legal Aid Society found that from 1998 to 2001, 30 percent to 50 percent of prison suicides occurred within these harsh confinement units, which house less than 8 percent of the total prison population.

There is never justification for prison conditions that cause mental torture. And it is a mistake to think that the conditions do not directly affect us. Many inmates will some day return to be our neighbors, some even from death row. New York State should not be in the business of creating dreadful conditions that breed psychotics who then return to society.

Given the extreme conditions of death row, one might expect that the inmates held there are exceptionally dangerous. But they are not.

The bar association study found that prisoners on death row are among New York's most cooperative inmates. From 1996, when New York's death row was established, to 2001, there was not a single reported incident of violence, an attempted escape or even a serious security violation, like the possession of a banned item that could be made into weapons.

The time has come to correct these problems. No longer should any areas of the New York prison system be off limits to observers. Governor Pataki should ensure that state prisons, including death row, are open to inspection by responsible

persons outside the system. And legislation should be enacted that ensures that the harsh isolation and brutal conditions that are inflicted on death row inmates are stopped.

Whether or not the death penalty is reinstated in New York, death row conditions and the ill treatment of thousands of other inmates in supermax units need to be part of the debate. We cannot close our eyes to their suffering. The Legislature and the governor should immediately undertake reforms to ensure that New York State prisoners are no longer subjected to what is essentially state-sponsored torture.

**Selected writing (2/2), reproduced here in part. Citation and full article accessible:**

Deitch, M, and Mushlin, M. What's Going On in Our Prisons? The New York Times, January 4, 2016. <https://www.nytimes.com/2016/01/04/opinion/whats-going-on-in-our-prisons.html>

Leonard Strickland's barbaric and unnecessary death at the hands of prison guards at the Clinton Correctional Facility in upstate New York highlights the need for independent oversight of the state's prisons. His beating in 2010, the details of which have only recently come to light, is the latest in a long list of instances of brutality toward inmates in New York's prison system.

The state's inhumane practices involving solitary confinement have also generated outrage. Thousands of prisoners have been held in extreme isolation, in some cases for years, and often for minor rule violations, at great cost to their mental health and potential for rehabilitation. A settlement announced last month of a lawsuit brought by the New York Civil Liberties Union will reduce both the number of inmates held in isolation and the maximum stay, and will abolish some of the harshest conditions.

While this is a welcome move, it provides for only two years of monitoring once it has been implemented and does not address the many issues that affect inmate health and safety for the overwhelming number not in solitary confinement.

This is why additional governmental oversight is urgently needed to truly change the culture of a system that holds 53,000 inmates across 54 prisons. What goes on inside these prisons is largely hidden from view, and there is little accountability for wrongdoing.

The New York State Commission of Correction has longstanding authority to regulate and visit prisons. The state comptroller pointed out in a 2006 audit that the commission had essentially defaulted on that responsibility. Nine years later, little has changed. The commission investigates some inmate deaths, but it cannot be fairly described as a monitoring body.

The result is that New York's prison system operates almost entirely below the radar. This invisibility should end by setting up a system of effective independent governmental oversight to ensure the health and safety of prisoners. If harm is to be prevented in these dark places, we must know what is happening inside.

Nationally, the situation is not better. For example, abuse of prison inmates appears to be endemic in Florida, prison rape is widespread across the country, and the hanging death in a Texas jail cell of Sandra Bland, who was arrested after a routine traffic stop, highlighted the national problem of suicide in custody. (Her family has disputed the finding by authorities that she killed herself.)

While we are witnessing a movement for increased police accountability, the need for transparency and accountability is even more urgent in the nation's jails and prisons, given their closed environments and lack of cellphones and body cameras to capture abusive encounters. These institutions primarily confine the most powerless and vulnerable, including poor people who are disproportionately African-American and Latino, as well as people with mental illness.

The New York State Assembly Standing Committee on Correction recently held a hearing about the need for such oversight. We were among the experts invited to testify about what an effective system of oversight might look like.

The American Bar Association has provided clear guidance on this issue, which we helped to develop. It calls for every state to create an independent government monitoring body for its prisons and jails that reports to the public about conditions in those facilities.

The State Legislature should follow the A.B.A.'s guidance and establish a monitoring body with unfettered access to prison facilities, staff, inmates and records in announced or unannounced visits.

The monitor should be empowered to examine and report on all aspects of a facility's operations that affect inmates, including, for example: medical and mental health care; use of force; inmate violence; conditions of confinement; staffing practices; inmate discipline and use of solitary confinement; substance abuse treatment; educational and rehabilitative programming; and re-entry planning.

There also should be an independent investigatory body that reviews complaints and allegations of wrongdoing, including inmate grievances, abuse claims, denial of access to health care and inmate deaths.

At the same time, the prison system should enhance its own internal accountability measures, such as its decision to electronically log complaints to monitor accusations of staff misconduct.

But in light of recent events, the public is unlikely to be satisfied with a prison agency's pronouncements that everything is fine or trust the vindications of staff members accused

of abusive behavior. Only independent monitoring and investigations can provide that level of public accountability.

The costs of this oversight would pale in comparison to the hundreds of millions of dollars paid out in lawsuits stemming from unconstitutional practices and the untold costs associated with ineffective programs and unnecessary use of solitary confinement.

Designed correctly, an oversight body can provide an early warning system about patterns of complaints against certain prison employees, assess the appropriateness of discipline meted out to staff members, address concerns about inadequate health care or protocols for dealing with mentally ill inmates, highlight programs that are ineffective, point to areas for improved staff training, and identify policies that need to be adjusted. A monitor could also identify practices worth replicating at other prisons.

The awareness by prison staff that a monitor could show up at any time would check employee misbehavior. The culture of a prison changes when outsiders shine a light on its operations and conditions.

External oversight will likely result in safer prisons for inmates and employees alike, more effective rehabilitation programs, a healthier prison culture that supports positive outcomes and taxpayer savings from fewer lawsuits and lessened recidivism.

Without independent oversight, we will not have a prison system worthy of our values. If further tragedies are to be avoided, the New York Legislature and its counterparts around the nation must provide for comprehensive and meaningful oversight of all correctional facilities.

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## Judith Resnik, JD

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**Selected writing, abstract reproduced here. Citation and full report accessible:**

Resnik, J. Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies (with Hope Metcalf, Jamelia Morgan, Samuel Oliker-Friedland, Julia Spiegel, Haran Tae, Alyssa Work, and Brian Holbrook) (2013), <http://ssrn.com/abstract=2286861>.

### **Abstract:**

This report provides an overview of state and federal policies related to long-term isolation of inmates, a practice common in the United States and one that has drawn attention in recent years from many sectors. All jurisdictions in the United States provide for some form of separation of inmates from the general population. Prison administrators see the ability to separate inmates as central to protecting the safety of both inmates and staff. Yet many correctional systems are reviewing their use of segregated confinement; as controversy surrounds this form of control, its duration, and its effects.

The debates about these practices are reflected in the terms used, with different audiences taking exceptions to each. Much of the recent public discussion calls the practice “solitary confinement” or “isolation.” In contrast, correctional facility policies use terms such as “segregation,” “restricted housing,” or “special management,” and some corrections leaders prefer the term “separation.”

All agree that the practice entails separating inmates from the general population and restricting their participation in everyday activities; such as recreation, shared meals, and religious, educational, and other programs. The degree of contact permitted — with staff, other inmates, or volunteers — varies. Some jurisdictions provide single cells and others double; in some settings, inmates find ways to communicate with each other. The length of time spent in isolation can vary from a few days to many years.

This report provides a window into these practices. This overview describes rules promulgated by prison officials to structure decisions on the placement of persons in “administrative segregation,” which is one form of separation of inmates from the general population. Working with the Association of State Correctional Administrators (ASCA), the Arthur Liman Program at Yale Law School launched an effort to review the written policies related to administrative segregation promulgated by correctional systems in the United States. With ASCA’s assistance, we obtained policies from 47 jurisdictions, including 46 states and the Federal Bureau of Prisons.

This overview provides a national portrait of policies governing administrative segregation for individuals in prisons, outlines the commonalities and variations among jurisdictions, facilitates comparisons across jurisdictions, and enables consideration of how and when administrative segregation is and should be used. Because this review is of written policies, it raises many questions for research — about whether the policies are implemented as written, achieve the goals for which they are crafted, and at what costs. Information is needed on the demographic data on the populations held in various forms of segregated custody, the reasons for placement of individuals in and the duration of such confinement, the views of inmates, of staff on site, and of central office personnel; and the long-term effects of administrative segregation on prison management and on individuals. Without such insights, one cannot assess the experiences of segregation from the perspectives of those who run, those who work in, and those who live in these institutions.

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## Scott Semple

Commissioner, Connecticut Department of Corrections

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**Selected writing, reproduced here in part. Citation and full article accessible:**

Pazniokas, M. A peek behind bars, and an invitation to reimagine prison. The Connecticut Mirror, November 21, 2016. <http://ctmirror.org/2016/11/21/a-peek-behind-bars-and-an-invitation-to-reimagine-prison/>

**Somers** — Scott Semple sat in the prison chow hall and squeezed tartar sauce out of a packet to dress up a dry, rectangular piece of breaded fish. Inmates working the kitchen peered through the narrow slot from which every diner's tray wordlessly emerged, each with a carton of milk, a fresh-baked roll and portions of fish, mac and cheese, corn and diced carrots, and apple sauce.

"They're watching to see if I eat this," Semple said, trying not to laugh. The correction commissioner picked up his plastic spork and dug into his first prison meal since his days as a warden. Up and down the row of fixed tables and stools, an economist, a banker, a teacher, a fire chief, a former city councilman, a church worker and others did the same, their introduction to how 1,400 men do time at Osborn Correctional Institution, a prison that opened 53 years ago in the same month as John F. Kennedy's assassination.

The three-hour tour Friday night was arranged by the Vera Institute of Justice, a national prison reform group that has found a willing partner in Semple, one of the correction officials trying to broaden the role of rehabilitation in the U.S., the nation with the highest incarceration rate in the world. One of Vera's more modest goals in its Reimagining Prison campaign is demystifying life behind bars.

"This part of Reimagining Prison is about transparency," said Sarah Lustbader, a former public defender in the Bronx, now with Vera. "What we want to get out of it is to normalize the idea that prisons are part of the community, and you as a community member should be able to go into your local facility and say, 'Hey, what's going on here?' For a long time, and this was by design, for 200 years about, prisons have been walled off from society."

Vera's pitch is enlightened self-interest, a pragmatic approach in a time when getting tough on crime still plays at the polls and the president-elect portrays America as unsafe, despite a falling crime rate. It wants America to know 95 percent of men and women behind bars eventually go free — and to think about what that means for society.

"If you encounter someone who was incarcerated, do you want to encounter somebody who was made to suffer?" Lustbader asked. "Or do you want to encounter somebody who came out better and better equipped with more opportunity than when they went in?"

Osborn is in a remote corner of Somers, a town of about 11,000 chosen by Money Magazine as one of its Best Places to Live based on its “economic opportunity, good schools, safe streets, things to do and a real sense of community.” The low-rise prison, ringed by fences topped with razor wire, sits on what once was 550 acres of rolling farmland near the border with Enfield and Longmeadow, Mass.

Its neighbors are other prisons: Northern C.I., a maximum-security facility ready for anyone who screws up at Osborn, and Carl Robinson C.I., Enfield C.I. and Willard-Cybulski C.I. In the rural darkness Friday night, an unnatural glow emanated from the security lights of each compound, reinforcing them as worlds apart.

Cybulski is home to one of Semple’s reforms: a community reintegration center that readies inmates for release with counseling and classes to prepare them for finding housing and getting and keeping a job. Inmates nearing release regularly shed their prison khakis for civilian clothes and are escorted to an advanced manufacturing class at Asnuntuck Community College. A local politician has objected. Semple says the course has been a pipeline to decent jobs with manufacturers. The classes continue.

Semple is supported by Gov. Dannel P. Malloy, a Democrat who has pushed with mixed results what he calls his “Second Chance Society” agenda. He convinced the legislature last year to reclassify most drug possession crimes as misdemeanors, which contributed to shrinking Connecticut’s prison population by 1,130 inmates. But he failed to win the authorization necessary to handle many crimes in juvenile court for defendants up to age 21, saving them from adult records that can limit opportunities in perpetuity.

Over the weekend, Connecticut’s prison population hit a 20-year low of 14,893, a 25 percent reduction since early 2008, when it peaked at 19,894. With 5 percent of the world’s population, the U.S. still houses 25 percent of its prisoners, far more than any other nation.

The commissioner was one of Vera’s guests on a five-day tour of prisons in Germany last year. One of the stops was Neustrelitz Prison, a facility for prisoners aged 18 to 25. Semple saw a model he wanted to replicate: Staff geared to the challenges of working with impulsive young adults in a facility with a therapeutic approach and a belief the human brain does not mature until 25.

But more than a year later, the state’s budget problems have forced Semple to downsize his ambitions. The current plan is to begin with a 100-bed unit and concentrate on inmates from age 22 to 25, since the Manson Youth Institution already segregates prisoners through age 21.

On the tour Friday, the visitors saw a work in progress.

To enter Osborn, the visitors passed through a metal detector at the gatehouse, where a correction officer logged in each person, matching them to a photo ID. The process

would be reversed on the way out, a check against escapes. On the other side of the entrance gate, a holiday wreath hung by the door to the prison.

Semple and Warden Edward Maldonado greeted the group in the visitors room, a brightly lit space with a beige terrazzo floor and off-white cinderblock walls and columns papered with signs. You may hold hands. But don't chew gum. Or pass any items. Or visit on a state holiday.

Other signs plead in English and Spanish to alert staff to signs of depression. "Suicide is preventable...if you hear something...or see something...say something. You may save a life...It's not snitching to help someone who is hurting."

The Connecticut prison system may be run by a reformer who places rehabilitation over retribution, but opportunities for employment in the kitchen and Prison Industries program at Osborn are limited for the 1,400 inmates.

"I only have about 600 jobs available, so some inmates might never work," Maldonado said.

A clothing factory within Osborn's walls produces T-shirts, boxers and khaki pants for the inmates. On Friday night, inmates punched in and took their places at sewing machines within a chain-link enclosure, a scene that might have been as it was a half-century ago. The work provides some modest wages and contributes to a work ethic, but no textile jobs await inmates once they leave.

Andrea Comer, who works at the Connecticut Business and Industry Association, said she knows Semple has made progress, but she was unsettled by the sight of inmates laboring at jobs that have not existed for decades in Connecticut outside Osborn's walls.

"Are we equipping folks while they are in there doing work that is valuable?" Comer said. "It would be great if we could get them working on stuff that gives them a skill they can use when they come home."

In the prison library, the tour group was introduced to Tino Negron, who was locked up at 16, accused and later convicted of shooting a man to death in Bridgeport. That was 29 years ago.

Negron and other inmates pulling long sentences run Skills of Socialization, a 12-week program that offers a mix of peer counseling and encounter sessions with younger inmates, many with similar stories of trauma and abandonment, involvement with drugs and gangs.

The visitors sat in silence and observed an abbreviated session. One young inmate talked about never knowing his father and disappointing a mother whom he says labored to keep him from trouble on the street.

“The sessions are real,” said Alex Rosado, the prison chaplain.

On the way out, the visitors peppered the prison officials with questions about punitive segregation, issues of sexuality in prison, medical facilities and hospice care. One woman asked Maldonado what he would do if money were no object.

“Technology. Technology would be great,” he said, mentioning that other states offer “digital visiting.”

Miles Hall of Advocacy Unlimited, which helps people recovering from mental health and addiction issues, asked how the department was coping with budget cuts.

Maldonado said he’s lost a half dozen positions at Osborn, part of the 40 layoffs department wide.

“We make it work,” he said. “Honestly, we don’t have a choice. We make it work.”

John Santa, a former energy company chief executive who has visited every Connecticut prison with the Order of Malta, whose Connecticut chapter has adopted the cause of prison reform and prisoner re-entry, had a broader question.

“How do we measure corrections?” Santa asked. “Correction is our mission. What are the benchmarks? What are the bellwethers?”

Maldonado laughed and called that a global question. He invited Monica Rinaldi, the deputy commissioner to answer. She told Santa that the recidivism rate is the gold standard. It’s been falling in Connecticut, along with the crime rate and prison population.

“That’s the number everybody looks at,” she said. “Nationally, that’s what everybody looks at to see the impact.”

But she said Semple is trying to measure every change they make in the system.

“He’s really into performance measures,” Rinaldi said. “He makes us measure everything we do. We’re constantly measuring things in this agency. That’s kind of a new thing for us.”

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## Homer D. Venters, MD, MS

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Glowa-Kollisch, Sarah; Kaba, Fatos; Waters, Anthony; Leung, Y Jude; Ford, Elizabeth; Venters, Homer. From Punishment to Treatment: The "Clinical Alternative to Punitive Segregation" (CAPS) Program in New York City Jails. *International journal of environmental research & public health*. 2016 Feb 02;13(2):182-182 (2309522). <file:///Users/ericjepeal/Downloads/ijerph-13-00182.pdf>.

### 1. Introduction

The United States has the highest rate of incarceration in the world, with approximately 11.6 million people cycling through jails (in New York State: locally operated, short-term facilities that hold people awaiting trial and/or sentencing, as well as those found guilty and sentenced to a term of one year or less) and prisons (long-term facilities run by a State or the Federal government that hold people serving sentences of longer than one year) annually [1]. Approximately 95% of these incarcerations occur in jails, which are chaotic settings given the short stay of the incarcerated and the lack of established programs that exist in most prisons [2,3]. The New York City (NYC) jail system is the nation's second largest, with 70,000 annual admissions and 11,000 persons incarcerated at any given time. The median length of incarceration is 8 days. In the NYC jail system, the Bureau of Correctional Health Services (CHS) of the NYC Department of Health and Mental Hygiene (DOHMH) is responsible for all aspects of health care for the incarcerated, while the NYC Department of Correction (DOC) is responsible for security. Approximately 25% of those admitted to the jails will become part of the mental health service, of whom only a small percentage will ultimately be designated as having serious mental illness (SMI). Although the proportion of SMI patients has remained relatively stable in recent years, the percentage of persons who are followed by the mental health service has increased from approximately 12% in 2004 to 25% today. Because persons with mental illness have a 50% longer length of stay than others, on average, they now represent approximately 38% of persons in jail at any given time, despite only 25% of any admission cohort becoming a mental health patient.

Health providers in jails and prisons care for patients with high rates of substance use, mental health and chronic medical concerns [4,5]. In addition, these patients experience morbidity and mortality specifically related to their incarceration, ranging from medication interruption to injury to worsening mental health during solitary confinement, and mortality. Despite widespread use in American jails and prisons, solitary confinement is a practice that has been associated with adverse health consequences to those placed in these settings and unclear benefits to security or safety [6,7]. Solitary confinement involves being placed alone in a cell for 22–24 h per day as

punishment for violating correctional rules or as a preventive measure because someone has been deemed too dangerous to be around other inmates. These types of solitary confinement are often termed punitive and administrative segregation, respectively, and they are considerably more expensive than other management approaches because of their requirement for additional correctional officer and health services staffing. Internal reviews conducted by CHS have revealed that these types of units are also the site of disproportionate levels of violence for both staff and inmates.

In 2012, CHS adopted a human rights framework to the NYC jail health mission, including an examination of concerns associated with solitary confinement [8]. An early quality improvement project of our human rights subcommittee was to analyze health outcomes associated with self-harm among patients in jail [9]. This analysis of approximately 225,000 jail admissions between 1 January 2010 and 31 October 2012 revealed that predictors of self-harm included SMI, ever being placed in solitary confinement and being an adolescent. Although only 7.3% of patients in this study ever passed through solitary confinement, they represented over half (53.3%) of all self-harm and almost half (45.0%) of high-lethality self-harm. Based on these data and concerns from advocates and other policy makers, DOC and CHS designed and implemented an alternative to solitary confinement for persons with serious mental illness who received infractions for violating jail rules. This unit came to be called the Clinical Alternative to Punitive Segregation (CAPS) unit. While the CAPS unit was designed to replace solitary confinement for patients with SMI, those with lower levels of mental illness would continue to experience solitary confinement, in units called Restrictive Housing Unit (RHU). The RHU aims to combine solitary confinement with some clinical interventions via an incentive-based system. At the most advanced level, patients in the RHU can earn up to 4 h out-of-cell time each day, leaving the bulk of their experience as solitary confinement. Prior to this initiative, those patients who violated jail rules and sentenced to solitary confinement, but were found to be too mentally ill to sustain that placement were primarily directed to the Mental Health Assessment Unit for Infracted Inmates (MHAUII), which housed 200 patients at the time of closure, approximately 25% of whom met criteria for SMI. Very few clinical services were available to these patients, aside from cursory cell-side rounds and occasional out of cell encounters in the jail health clinics. When the decision was made to close MHAUII and the first men's CAPS program opened in November 2013, patients were transferred into either CAPS or the RHU.

The CAPS units were designed as clinical settings where patients would not be locked in isolation, but would instead participate in a comprehensive schedule of therapeutic activities, including psychotherapy, creative art, nursing education groups, individual mental health and medical encounters and community meetings with patients, health and security staff (Table 1). The CAPS units are lock-out units, meaning patients are encouraged to spend their days outside their cells interacting with others unless there is a clinical reason to be in their cell. Patients in the NYC jail system are categorized by their level of mental health needs. Any patient who has three or more encounters with the jail mental health service is designated as "M Status", while those patients designated as having SMI are those with more serious needs and a higher level of functional impairment, based on criteria established by the NY State Office of Mental Health [10]. In general, the patients identified for CAPS placement were those with SMI.

## 5. Conclusions

Adverse health outcomes and basic human rights concerns support elimination of solitary confinement, particularly for adolescents and persons with mental illness. The CAPS design is a costly, but effective alternative to solitary confinement in jail settings. Rates of injury and self-harm appear to improve when patients are in treatment settings as opposed to solitary confinement. Costs of CAPS-style units may be offset by reductions in injury, hospitalization and litigation. However, it may be preferable to reduce the rates of incarceration for mentally ill persons altogether.

## **Connecticut Department of Corrections Statistics**

# Connecticut DOC Statistics

The Connecticut Department of Corrections has statistics available online at:  
<http://www.ct.gov/doc/cwp/view.asp?a=1492&Q=270036>



## STATE OF CONNECTICUT DEPARTMENT OF CORRECTION Tactical/Operations Unit



### Fiscal Year 2015-2016 Key Stats. Look-back

	10 Years Ago July 1, 2005 To June 30, 2006	5 Years Ago July 1, 2009 To June 30, 2010	2 Years Ago July 1, 2013 To June 30, 2014	Last Year July 1, 2014 To June 30, 2015	Current July 1, 2015 To June 30, 2016
Inmate Assaults	486	467	364	365	359
Inmate Fights	**	958	878	852	777
Staff Assaults	245	232	192	184	177
Disciplinary Reports	19,203	19,682	16,545	15,481	15,799
Informals	8,594	6,295	3,511	3,248	3,137
Use of Force	1,027	1,440	1,265	1,228	1,196
Use of Chemical Agent	228	426	401	482	512
Suicides	4	2	5	4	4
Suicide Attempts	166	114	78	54	54
Escapes	1	0	1	0	0
Escape Attempts	0	0	1	4	3

**Note:** \*\* Data not tracked for this time period.

	Change From Last Year	Change From 2 Years Ago	Change From 5 Years Ago	Change From 10 Years Ago
Inmate Assaults	-1.64%	-1.37%	-23.13%	-26.13%
Inmate Fights	-8.80%	-11.50%	-18.89%	**
Staff Assaults	-3.80%	-7.81%	-23.71%	-27.76%
Disciplinary Reports	2.05%	-4.51%	-19.73%	-17.73%
Informals	-3.42%	-10.65%	-50.17%	-63.50%
Use of Force	-2.61%	-5.45%	-16.94%	16.46%
Use of Chemical Agent	6.22%	27.68%	20.19%	124.56%
Suicides	0.00%	-20.00%	100.00%	0.00%
Suicide Attempts	0.00%	-30.77%	-52.63%	-67.47%
Escapes	0.00%	-100.00%	0.00%	-100.00%
Escape Attempts	-25.00%	200.00%	0.00%	0.00%

## **Connecticut Office of Legislative Research Reports**

# CT Office of Legislative Research Reports

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## **PRISON CONDITIONS FOR DEATH ROW AND LIFE WITHOUT PAROLE INMATES**

By: Christopher Reinhart, Chief Attorney

April 4, 2011

2011-R-0178

You asked for a comparison of the prison conditions of inmates sentenced to death with those sentenced to life without parole.

### **SUMMARY**

It is difficult to compare the prison conditions of inmates sentenced to death with those sentenced to life without parole.

Inmates sentenced to death are housed at Northern Correctional Institution, the highest security prison in Connecticut (classified as a level 5 facility), and Department of Correction (DOC) directives set many of their conditions of confinement. But the directives do not specify the confinement conditions for inmates sentenced to life without parole. In addition, they may be held in different facilities and we do not have specific information on the confinement conditions for each facility. DOC provided general information on conditions for these inmates and DOC directives provide some additional details.

Based on this information, death row inmates are subject to more restrictions than inmates sentenced to life without parole including:

1. death row inmates are held in single cells while life without parole inmates are in double celled housing,
2. death row inmates have two hours of recreation outside of their cells six days a week and are always by themselves while life without parole inmates are usually outside their cells six to seven hours a day and can be with other inmates,

3. both types of inmates have access to the commissary but death row inmates face more restrictions on the types of property they can have,
4. death row inmates eat meals alone in their cells while life without parole inmates eat in their cells or in a chow hall or day room,
5. both types of inmates have access to programs and services but fewer programs are available at Northern than at other prisons,
6. death row inmates may have work assignments that are restricted to the death row housing unit while life without parole inmates have more opportunities including industry jobs, and
7. death row inmates are allowed up to three non-contact visits per week that are limited to one hour each while life without parole inmates may qualify for contact visits and are usually allowed at least two visits per week of at least one hour.

In addition, the directives require death row inmate to be escorted by at least one staff person and are placed in restraints when moving outside their cell. Directives do not specify these procedures for inmates sentenced to life without parole.

## **DEATH ROW INMATES**

The sections below describe normal management for death row inmates as described in DOC's directives (Administrative Directives 9.2 and 9.4 and DOC Death Row Directive 9.4.1). The directives state that individual inmates may require additional restrictions for order or control based on their history or current behavior.

### ***Cells***

Directives require death row housing areas to be well-ventilated, adequately lighted, appropriately heated, and sanitary. Cells are normally equipped with a bed and furnished consistent with general population cells.

The directives require staff to search each death row cell at least three times a week. The death row housing unit must be:

1. visited by staff at least every 15 minutes on an irregular schedule and a more frequent basis for problem inmates,
2. visited by a custody supervisor or unit manager each shift, and
3. inspected at least twice a week by the unit administrator.

Inmates who are violent, have a mental disorder, or demonstrate unusual or bizarre behavior are observed more frequently and suicidal inmates are under continuing supervision.

According to DOC spokesman Brian Garnett, death row inmates spend 22 hours a day in their cells, have no congregate activity, and are always by themselves (Eaton-Robb, Pat, Associated Press, "Hayes Will Face an Isolated Life on Death Row," November 28, 2010, in various newspapers including *The Middletown Press*).

### ***Property***

Under the directives, death row inmates:

1. are provided appropriate clothing that is not degrading and should be the same as general population clothing unless an adjustment is needed for self-protection such as removing a belt to prevent a suicide attempt,
2. can have basic personal items for use in their cells,
3. can have reading materials,
4. can access the commissary, and
5. have the same opportunities for writing and receiving but not retaining letters as general population inmates.

We have attached a list of items that death row inmates are currently allowed to have.

Property can be removed when an inmate is under certain restrictions such as behavior management status, when the inmate retains only a safety gown and safety blanket.

### ***Movement Outside Cell***

The directives require a minimum of one staff person to escort each death row inmate. The directives also require the use of restraints when moving inmates outside of their cells. Death row inmates are:

1. handcuffed behind the back for routine out-of-cell movement including showers, recreation, social visits, social phone calls, using dayrooms (restraints are removed once the inmate is secured in the area and the process is reversed to return the inmate to his cell);
2. fully restrained in front (handcuffs, leg irons, and tether chain) for professional visits including attorney, medical, mental health, and related visits and video conferencing which require staff being secured in an area with the inmate (restraints remain on at all times); and

3. fully restrained behind the back (handcuffs, leg irons, and tether chain) for out-of-unit movement within the facility except when a medical or dental procedure requires full restraints in the front (restraints remain on at all times).

### ***Recreation***

Under the directives, death row inmates have recreation outside of their cells for a minimum of one hour daily, five days a week, but a supervisor may deny recreation when the inmate presents a threat to the unit's safety and security. The inmates receive an opportunity for meaningful recreation, using restraints commensurate with classification reviews of the inmate's current level of disruptive behavior. An inmate may be given additional out-of-cell time daily between 5:30 p.m. and 9:00 p.m. in the day room adjacent to the death row cells, one inmate at a time.

According to DOC spokesman Brian Garnett, death row inmates have two hours of recreation outside of their cells six days a week, one hour typically indoors in an area with the law library and a phone and the other alone outside in a courtyard inside a cage ("Hayes Will Face an Isolated Life on Death Row," November 28, 2010).

### ***Food***

Death row inmates receive all meals in their cells. Food is of the same quality and quantity as for the general inmate population. Staff use alternative meal service if the inmate uses the food or food service equipment in a manner hazardous to the inmate, staff, or other inmates. There is no contact with any non-death row inmates.

### ***Programs and Services***

Under the directives, death row inmates have access to available programs and services according to applicable court decrees and sound correctional management principles. This includes educational, social, and counseling services and religious guidance. They may access educational and library programs consistent with security needs.

A member of the health services unit visits the death row housing unit at least once per shift, a counselor visits death row inmates at least daily, and facility chaplains schedule visits to death row inmates at least weekly.

Most of the programs available at Northern are for other inmates incarcerated there: those in the administrative segregation program, chronic disciplinary unit, or security risk group. Other programs include:

1. in-cell classes dealing with choices inmates made and making different choices, handling stressful situations, and interpersonal effectiveness;
2. HIV education and support;

3. skill building;
4. religious services and study for various faiths;
5. special education and pupil services; and
6. victim-offender dialogue.

A list of programs is available

at: <http://www.ct.gov/doc/lib/doc/pdf/compendium/compendiumnorthern.pdf>.

### ***Work***

The directives restrict work assignments for death row inmates to the death row housing unit. The inmate is secured in the assigned area until completing the task. Direct supervision is not required while the inmate is in the secured area but the area and the inmate must be shaken down before he or she is returned to his or her cell.

### ***Visits and Phone Calls***

The directives allow visits to death row inmates unless there are substantial reasons for withholding the privilege. Visits may be cancelled if the inmate's behavior or actions are a threat to facility or staff security or safety. Legal visits are permitted as needed and approved by the unit manager or his or her designee.

Northern's visitation schedule states that:

1. visits are non-contact,
2. visitors are separated by a glass partition and communicate by a phone which may be monitored,
3. all social visits are scheduled through the unit manager's office,
4. death row inmates are allowed up to three visits per week, and
5. visits are limited to one hour.

Unless authorized by the unit administrator or his or her designee, inmates are allowed limited telephone privileges except for calls related to accessing the inmate's attorney of record.

## **INMATES SENTENCED TO LIFE WITHOUT PAROLE**

DOC directives do not specify the confinement conditions for inmates sentenced to life without parole. An inmate's confinement conditions could vary based on where he or she is confined.

According to information provided by DOC, inmates sentenced to life without parole would be transferred to a level 4 facility: Cheshire Correctional Institution, Corrigan-Radgowski Correctional Center, Garner Correctional Institution, or MacDougall-Walker Correctional Institution. But DOC stated that the specific facility would vary based on the inmate's classification and assessment and available bed space. Under DOC's *Classification Manual*, it appears that an inmate sentenced to life without parole could be confined in a higher or lower security facility based on various classification factors.

### ***General Level 4 Conditions***

DOC provided us with general information about the confinement conditions for inmates sentenced to life without parole in a level four facility. These inmates:

1. have double celled housing;
2. have employment opportunities including industry jobs; and
3. can receive meals in their cells or in chow hall or day room depending on the facility.

According to DOC spokesman Brian Garnett, inmates sentenced to life without parole are allowed outside their cells six to seven hours a day and can spend that time with other inmates (“Hayes Will Face an Isolated Life on Death Row,” November 28, 2010).

### ***Programs***

DOC offers different programs in different facilities, but all of the level 4 facilities offer more programs than Northern. For example, MacDougall-Walker programs include academic education (such as adult basic education, GED, and special education), vocational education (such as carpentry, computers, and graphics), parenting and family issues classes, addiction services, anger management, art classes, book club, business education, domestic violence groups, HIV counseling, victim-offender dialogues, religious study and worship for various faiths, and a lifer's group for offenders serving at least 25 years. MacDougall-Walker also has an industries programs and operates a regional commissary that employs inmates. More information is available at: <http://www.ct.gov/doc/cwp/view.asp?a=1499&Q=265424&docNav=1>.

Garner houses inmates with significant mental health needs and has more mental health programs than other facilities.

### ***Visits***

Under DOC directives, inmates are normally allowed a minimum of two regular visits per week. Level 2, 3, and 4 facilities can allow contact visits that are not separated by a screen or glass partition, but inmates are not entitled to them. Level 4 inmates must qualify for contact visits based on their disciplinary reports, program participation, and security status. Facilities can set specific rules for the duration of visits but they are normally allowed for at least one hour. Facilities may limit the number of visitors at the same time due to space, the amount of activity, or other reasonable factors (DOC Directive 10.6).

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# OLR RESEARCH REPORT

## INMATES AND MENTAL HEALTH

By: Christopher Reinhart, Senior Attorney

November 22, 2014

2004-R-0851

You asked a number of questions about inmates and mental health.

### SUMMARY

This report answers a number of your questions on this topic. We are waiting for additional information from the Department of Correction (DOC) and will answer your remaining questions in a separate report. Anne Cournoyer, DOC liaison, provided the following information.

#### ***How many inmates are treated with psychoactive medications?***

According to DOC, this requires extensive research. Many inmates brought to intake facilities are put on medication and discharged or released on bond within a week. According to DOC, about 15% of the incarcerated population has mental health issues requiring intervention and about half of that group is prescribed psychotropic medication. The incarcerated population on November 1, 2004 was 18,763. Based on this figure and DOC's estimation, about 2,814 inmates would require intervention and 1,407 would be prescribed psychotropic medication.

#### ***Have lawsuits required staffing ratios for mental health services in correction facilities?***

DOC recently negotiated a settlement with the Office of Protection and Advocacy regarding inmates at the Northern Correctional Institution. This requires the equivalent of one full-time psychiatrist for every 150 inmates on psychotropic medication at Northern and Garner Correctional Institutions (Office of Protection and Advocacy v. Choinski, D.Conn., No. 3: 03CV1352).

A consent decree also requires the equivalent of one full-time psychiatrist at the Bridgeport Correctional Institution to handle mentally ill inmates in the infirmary.

#### ***What are the training requirements for staff providing mental health services?***

Correctional managed health care staff must attend a training academy and must receive 40 hours of refresher training each year about custody topics (such as fire safety) and health services (such as suicide prevention and blood-borne pathogens). Facilities also conduct training specifically related to the facility's mission. For example, staff at Garner Correctional Institution receive more mental health training and this year received one week of training from a Texas correctional psychologist on programs and managing mentally ill inmates.

***How soon must an inmate have a mental health evaluation after entering a facility? Are there delays in conducting the evaluations? Are inmates evaluated each time they are transferred?***

Inmates receive a mental health screening if (1) they are first time offenders, (2) the court order suggests mental health problems, or (3) medical staff at the inmate's medical evaluation on arrival identify a mental health issue. Most inmates requiring a screening receive one the same day. Inmates who are processed on the third shift are screened within 12 hours. Inmates are prioritized and there is no waiting list. DOC uses on-call psychiatry or placement in an infirmary setting if there are placement questions or observation is required.

Before an inmate is moved to another facility, the staff prepares a transfer summary. Inmates with serious mental health issues are "flagged" on intake at the new facility. All inmates transferred to Garner Correctional Institution are evaluated by mental health staff.

***Have inmates awaiting mental health treatment assaulted themselves, other inmates, or staff?***

Inmates are evaluated on intake and those that may be a danger to themselves or others are placed in an infirmary setting for observation. Inmates are also classified for housing needs and inmates with serious or persistent mental illnesses are placed in special housing.

Assaults have occurred and it is often attributed to poor medication compliance and serious personality disorders. We do not yet have data on the number of these assaults.

***How many inmates committed or attempted suicide, and in which facilities, during the last seven years?***

The table below shows the number of suicides in the last seven years in each facility.

Table 1: Number of Suicides by Facility in the Last Seven Years.

<i><b>Facility</b></i>	<i><b>Number of Suicides</b></i>
Hartford	8
New Haven	5
Bridgeport	5
Corrigan	5
York	4
Garner	6
Manson Youth	2
Walker	1
McDougall	1
Facilities in Virginia	1

DOC states that it will take more research to determine the number of suicide attempts. As with the number of completed suicides, the number of attempts would be higher in the intake facilities (Hartford, New Haven, Bridgeport, Corrigan, and York Correctional Institutions).

***Is there a system to track inmates with mental health needs from arrest to discharge that is available to the courts, law enforcement, and corrections?***

There is no database that the courts or law enforcement shares that tracks these individuals. In addition, DOC states that legislation prevents DOC health service staff from accessing the Department of Mental Health and Addiction Services (DMHAS) database. But DMHAS jail diversion staff notifies intake facilities if they know the court is sending a mentally ill person to DOC.

Communication with the court is done through procedures that require written or phone notification.

DOC states that agencies try to work together to transmit information.

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## **News Articles**

## Articles

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### Recent Connecticut Articles

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#### **MALLOY MOTHBALLS PART OF PRISON AS POPULATION DECLINES**

**by Christine Stuart | Dec 7, 2016 5:04pm**

Available online:

[http://www.ctnewsjunkie.com/archives/entry/malloy\\_mothballs\\_part\\_of\\_prison\\_as\\_population\\_declines/](http://www.ctnewsjunkie.com/archives/entry/malloy_mothballs_part_of_prison_as_population_declines/)

SOMERS, CT — Gov. Dannel P. Malloy joined Correction Department Commissioner Scott Semple at the Osborn Correctional Institute in Somers on Wednesday to tout his administration's success in reducing crime and the prison population.

The setting for the press conference was a recently mothballed wing of the medium security prison built in 1963 that housed 400 inmates before it closed in October.

"Our inmate population is dropping not because we are opening up the prisons and letting people out. That's not the reason. But because fewer people are committing crimes which then leads to their arrest and incarceration," Malloy said.

New admissions to prison are the single biggest factor behind the dropping prison population, down 17 percent since 2012. The total prison population is down 13 percent over the same period, according to state officials.

"This is not a fluke," Malloy said. "This is hard work...it's also good policy and good laws."

Over the last year, Connecticut experienced the second-largest drop in violent crime in the country. Connecticut was one of only nine states to see a drop in violent crime between 2014 and 2015, according to F.B.I. statistics. At the same time, the number of murders in the state increased by 31.5 percent.

The number of inmates housed Wednesday at Osborn was 1,388, which is down from an all-time high of 2,000 back in 2008 during Republican Gov. M. Jodi Rell's administration. Rell briefly halted all parole following the 2007 Cheshire home invasion.

In January 2008, 11 inmates at Osborn filed a lawsuit detailing the cramped conditions at the facility, which required at least two inmates to share a cell.

“Factoring in all the stationary material in the cells, including the bed, toilet, desk, and storage locker, the available floor space which can be utilized by the inmates is approximately 27 square feet. That equates to 13 square feet per inmate,” the **lawsuit** said.

The total prison population back in January 2008 was 19,770.

The total prison population was down to about 14,825 inmates Wednesday, according to state officials. At the beginning of October there were 15,010 inmates in the state correctional facilities.

In 2015, Malloy was able to get the the legislature to agree to a package of criminal justice reforms that got rid of mandatory minimums for possession of narcotics within 1,500 feet of schools or daycares.

In the first year the law took effect, the number of pre-trial prisoners with a controlling offense of narcotics possession has dropped 49.4 percent and the number of sentenced possession offenders has dropped by 41.3 percent for a total reduction of 44.1 percent. As of Nov. 1 the total number of individuals held on that charge was down to 266.

Correction Commissioner Scott Semple said drop in the prison population means “the criminal justice reforms championed by Gov. Malloy are working.”

But not every effort Malloy has made has been successful. Malloy was unable last year in getting a package of bail and juvenile justice reforms passed by the legislature. He said he will try again this year.

As far as the drop in violent crime is concerned, “I know it’s hard for them [the legislature] to admit, but we must be doing something right,” Malloy said.

During his tenure, Malloy had closed three prisons and there are plans to close one more before the end of the fiscal year. However, Malloy did not know which one is on the chopping block.

There are 20 correctional facilities in Connecticut.

Over the past year the Correction Department’s budget has been reduced \$71 million.

Malloy traveled to Germany last year to see how a Berlin facility is managing to pay less and getting better results than American prisons. Part of the journey was documented by a **60 Minutes**.

Malloy, a former prosecutor, seems to want to make criminal justice part of his legacy.

The two-term governor said he's contemplating a third term.

"I'm actively considering it, both pro and con," Malloy said. "Gotta lot to do on other things and I'll let you know."

# Juvenile Reports

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## How Solitary Confinement Hurts the Teenage Brain

Teens isolated in prison can suffer from mental health consequences for years.

By Laura Dimon, June 30, 2014  
The Atlantic

**Available online:** <http://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/>

Lately, Josh has been having delirious dreams, often waking in cold sweats, panicked and disoriented. “I started to feel like I was going crazy,” he said. The episodes are unpleasant, but they’re not unfamiliar; they’re reminiscent of the time he spent in solitary confinement as a teenager 16 years ago.

Josh’s story is a glimpse into a troubling practice that is sometimes considered too cruel for adults, and even more so when used on minors. The effects are damaging and lasting, and ultimately, they’re not just a problem for the child, but for society as a whole.

Solitary confinement involves isolating inmates in cells that are barely larger than a king-sized bed for 22 to 24 hours per day. It wreaks profound neurological and psychological damage, causing depression, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, anxiety, and anger. Boston psychiatrist Stuart Grassian wrote that “even a few days of solitary confinement will predictably shift the EEG pattern towards an abnormal pattern characteristic of stupor and delirium.”

**Once, Josh's isolation lasted for two weeks in a cell in the basement of Newport jail.**

If solitary confinement is enough to fracture a grown man, though, it can shatter a juvenile.

One of the reasons that solitary is particularly harmful to youth is that during adolescence, the brain undergoes major structural growth. Particularly important is the

still-developing frontal lobe, the region of the brain responsible for cognitive processing such as planning, strategizing, and organizing thoughts or actions. One section of the frontal lobe, the dorsolateral prefrontal cortex, continues to develop into a person's mid-20s. It is linked to the inhibition of impulses and the consideration of consequences.

Craig Haney, a professor of psychology at the University of California Santa Cruz, has been studying the psychological effects of solitary confinement for about 30 years. He explained that juveniles are vulnerable because they are still in crucial stages of development—socially, psychologically, and neurologically.

“The experience of isolation is especially frightening, traumatizing, and stressful for juveniles,” he said. “These traumatic experiences can interfere with and damage these essential developmental processes, and the damage may be irreparable.”

Juveniles can be placed in solitary for disciplinary, protective, administrative, or medical purposes. For Josh, now 33, it was his “smart mouth,” he said, that landed him there. He spent time in isolation in five different Oregon juvenile detention facilities before he turned 18. Once, the isolation lasted for two weeks in a cell in the basement of Newport jail, he said.

Josh, who was detained for burglary, described solitary as a “dark, dark place” and a “profoundly lonely experience.” If juveniles endure it for too long, he said, “You rob them of their spirit. You may as well kill [them].”

The ACLU said that just hours of isolation “can be extremely damaging to young people.” In December 2012, the Attorney General’s National Task Force on Children Exposed to Violence issued a report that read, “Nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”

**There are about 70,000 detained juveniles in the United States, 63 percent of whom are nonviolent.**

They noted that among suicides in juvenile facilities, half of the victims were in isolation at the time they took their own lives, and 62 percent had a history of solitary confinement.

The task force requested that the practice be used only as a last resort and only on youths who pose a serious safety threat. The UN expert on torture went further and called for an

“absolute prohibition [of solitary confinement] in the case of juveniles,” arguing that it qualified as “cruel, inhuman, and degrading treatment.”

In April 2012, the American Academy of Child and Adolescent Psychiatry issued a statement saying they concurred with the UN position. “In addition, any youth that is confined for more than 24 hours must be evaluated by a mental health professional, such as a child and adolescent psychiatrist when one is available,” they wrote.

Despite these declarations, there are about 70,000 detained juveniles in the U.S., 63 percent of whom are nonviolent. And in 2003—the most recent survey data available—35 percent had been held in isolation. More than half of them were isolated for more than 24 hours at a time.

The damage extends far past the time spent in isolation. Josh said that to this day he has “irrational thoughts or paranoia that seep in,” and that the “personal deficiencies” that solitary left behind, such as low self-esteem, are “hard to eradicate.”

“When you strip a person of their fundamental value, take away a core belief that, to someone, they matter, you really have no purpose for the time being,” he said. “Total—and I mean complete emphasis on *total*—worthlessness is always the final conclusion. This is who you are: a person who sits in a cell.”

He didn’t just feel worthless, he felt angry. He was a pliable teenager who had been hardened. By adulthood, he said, he had “a whole bag of chips on [his] shoulder.”

**"It's an expensive cycle, the same dumb thing over and over and over. Remember, they all become adults eventually."**

Congressman Tony Cardenas, a Democrat from California, has been fighting for juvenile justice reform for the past 18 years. He has voiced strong opposition to the use of solitary, saying that if there were a heavier focus on rehabilitation and restoration, re-offending rates would drop. Using solitary confinement, he believes, makes it more likely the child will commit a crime in the future.

“It’s an expensive cycle, the same dumb thing over and over and over,” Cardenas said. “Remember, they all become adults eventually.”

Some states are starting to reverse course. In February, for example, New York State corrections officials agreed to new guidelines that limit the maximum duration of solitary and curb the use for vulnerable populations. Inmates under 18 should now receive at least five hours of exercise and other programming

outside of their cells five days per weeks. And last month, the Department of Justice settled a long-running lawsuit against the state of Ohio.

The *New York Times* reported that, “Under the new agreement, Ohio will sharply reduce and eventually end solitary confinement. It will also ensure that young people receive individual mental health treatment and educational services with the aim of preventing the disruptive behaviors that led to the confinement in the first place.” The *Times* called Ohio a model for juvenile detention reform.

But significant work remains. According to Ian Kysel, the Dash/Muse Fellow at the Georgetown Law Human Rights Institute, no states prohibit isolation of children in adult facilities and only a few states limit it in juvenile facilities. Kysel recommends that states and the federal government be required to publicly report when, why, and for how long children are being isolated.

“We must also reform our laws to ensure that children are detained only as a last resort and never held in jails or prisons designed for adults,” he wrote in a message. “Children should never be subjected to a cruel practice that works against rehabilitation and violates their fundamental human rights.” Protecting children from solitary confinement requires a national ban, and, Kysel argues, the federal government should enact a prohibition.

Until that happens, we’ll continue sending teenagers into solitary confinement and creating problems down the line. “The blood is on everyone’s hands,” Josh said. “Kids need to be nurtured. Put them in solitary confinement and you do exactly the opposite.”

## CHILD ADVOCATE IDENTIFIES ABUSE AT DCF'S LOCKED JUVENILE FACILITIES

by Christine Stuart | Jul 22, 2015 7:59am

Available online:

[http://www.ctnewsjunkie.com/archives/entry/child\\_advocate\\_identifies\\_abuses\\_at\\_dcf's\\_locked\\_juvenile\\_facilities/](http://www.ctnewsjunkie.com/archives/entry/child_advocate_identifies_abuses_at_dcf's_locked_juvenile_facilities/)

The Office of the Child Advocate has identified numerous safety risks, incidents of abuse, and the use of “unlawful” restraint and seclusion at the Department of Children and Families’ two locked facilities for boys and girls in Middletown. The information is part of a report, released Wednesday, that also indicates that some whistleblower calls made by DCF staff about the abuse were ignored.

The **18-month investigation** by the state Child Advocate’s office involved a lengthy review of videotape from the facilities showing youth being physically restrained and locked in padded cells for not listening to staff or after attempting suicide.

On Tuesday, Child Advocate Sarah Eagan gave a handful of reporters an opportunity to view video captured by security cameras at the Connecticut Juvenile Training School (CJTS) and the Pueblo Girls Program during some of the more extreme incidents described in the report. She did not release the videos for public viewing, and the report uses fictitious names for each child.

In one video, Roberto, a 16-year-old boy diagnosed with PTSD and depression, was found face down in his bed with a shirt tied around his neck. The staff at CJTS handcuffed and shackled him and brought him to a padded cell.

From the report: “Roberto can be seen on the videotape brought into the padded cell in handcuffs and leg shackles, surrounded by 4 staff members. He stands in the corner, with his face to the wall, then drops to his knees to allow staff to remove his leg irons. All four staff members exit the padded cell. Roberto then curls in the corner of the cell, face to the floor, and sobs. The video ends. Documentation related to this incident notes that Roberto was later assessed by a nurse through the door of the padded cell. She did not enter. Roberto was medically assessed two hours later but was not seen by a therapist while in the padded cell or during the rest of the day.”

Then there’s Eleanor. A video shows the teen with a long history of abuse, neglect, and trauma eating a bowl of peanut butter and bananas in the corner of a hallway of the Pueblo Unit.

According to the report, Eleanor “threatened” staff with the bowl of peanut butter and bananas and refused to go to her room. After more than five staff members, including one

with a shield of some kind, tackled her and sat on her for more than 45-minutes, she was arrested for assaulting a staff member during the restraint. She was sent to the women's prison in Niantic and then returned to the Pueblo Unit only to be arrested again for assault and returned to Niantic.

Another youth — Jenny — was tricked into coming out of the dayroom to “use the phone.” When she emerged into the hallway, the video shows five youth service officers, also including one with a shield, violently tackle and restrain the teenager. She is carried into her room, and left screaming inside. After DCF staffers leave her room, she starts ripping her hair out. Later, she hides in a corner of her room and ties her shirt around her neck. Staff then run back in and cut the shirt off with a rescue hook. She is heard screaming, “I can't stay in here by myself.”

At one point the on-call clinician comes on the unit who takes over filming the incident with a hand-held video camera.

The records Eagan and her staff reviewed found that over the course of one year — from July 1, 2014, to July 1, 2015 — juveniles in the two facilities were physically restrained 532 times and handcuffed or shackled 134 times.

State law allows physical or mechanical restraints or seclusion to be used to “prevent immediate or imminent injury to the person or to others,” but Eagan concludes that they are being used at these facilities as behavior management.

“To expect struggling youth who have cognitive challenges, mental illness and other difficulties to sit in a chair, socially or physically isolated from others for lengthy periods of time or even days, is a futile, un-therapeutic and potentially harmful practice,” Eagan wrote in the report.

Eagan said the use of restraint traumatizes both the youth and the staff. Eagan also points out that DCF's records are inconsistent about how many times restraint or seclusion have been used, and that there are discrepancies when the reports are aligned with the videos obtained by Eagan and her staff.

The Child Advocate's investigation was undertaken in part because of concerns brought to the office by whistleblowers, including DCF employees who work in the facilities, as well as others who don't work there. The report says many of the whistleblower calls to the DCF hotline about abuse or neglect within the two locked facilities were never accepted by DCF for further investigation, and records of the calls were not maintained after 60 days.

From the report: “Multiple facility staff spoke with OCA confidentially and raised concerns that certain adults are permitted to verbally abuse or threaten youth: ‘I’ll knock your jaw out.’ ‘I’ll beat your ass.’ ‘You are a piece of shit.’ A Parole Officer called in an allegation that his adolescent client was being bullied by certain facility staff, that he was called ‘retard,’ and ‘Forrest Gump.’ The allegation was accepted by DCF for investigation but was not substantiated.”

The report also describes an April 2015 incident involving Jason, a 14-year-old 8th grader, in which a facility manager called the DCF hotline and reported that a staff member, during an intervention, grabbed the youth, “picked him up and slammed him to the ground.” The report was not initially accepted by the hotline for investigation, but after the OCA challenged the decision the agency opted to investigate.

According to Eagan’s report, DCF found that Jason had a medical alert in his file stating that he could not be restrained on his stomach with any pressure on his abdomen because of congenital kidney abnormalities and a history of asthma.

From the report: “The DCF investigator looked at a videotape which showed staff, during the course of a physical intervention, picking up Jason, raising him to shoulder height and slamming him to the floor. Staff placed his knee onto the boy’s stomach and chest and put his arm around the boy’s throat area. The boy was criminally charged as a result of the incident. The man was not.

Unfortunately, although investigators substantiated the staff member for physical neglect, they decided not to substantiate physical abuse, apparently due to the boy’s ‘lack of injury.’ However, the boy reported to investigators that his hips and shoulder were sore for days; and given his medical issues, he was at much greater risk of physical harm from the staff member’s deliberate actions.”

Eagan said when some of her office’s findings were identified to DCF, they were rejected. Specifically, Eagan said the department rejected the findings of “inappropriate restraint and lengthy seclusions” and “inadequate treatment support for youth in crisis.”

Despite the whistleblowers and the Child Advocate’s assertions, DCF has maintained that the facilities were operating appropriately.

“Throughout, DCF facility administrators have maintained in meetings with OCA that most children do well at CJTS and Pueblo, and the agency’s public reports or statements frequently reference programmatic resources and census information regarding how many children enter CJTS/Pueblo and how many discharge,” the report says.

Eagan's report also says her office has been unable to obtain up-to-date educational attendance records from the Connecticut Juvenile Training School database. The youth at the facility are supposed to continue their educations, but many of them frequently miss school participation because they are in seclusion or have been suspended or simply refuse to attend. One boy profiled in the report was issued 200 days of restricted status during his 15 months at the facility.

Eagan did point out that DCF has recently taken steps to reduce the practice of secluding youth for misbehavior. The agency also promised greater adherence to trauma-informed care, a suicide prevention audit, and reduction in the use of restraint and seclusion.

"We appreciate the Child Advocate's work on this report, and as we have previously released, we have already begun a process to address the issues cited in the report," the Department of Children and Families said in a statement.

"As was recommended, there are several focus areas for improvement, including more effective crisis management and treatment for youth who have serious behavioral health needs, a reduction in the use of restraints and seclusion, more time engaged in educational and rehabilitative programming, enhanced trauma-informed services, improved suicide prevention, and more effective use of data," DCF added. "All these areas are being addressed by an improvement plan, which is now in various stages of development and implementation."

Gov. Dannel P. Malloy said Wednesday he's happy the state is making advances, but "it has to make more advances." He said the reality is there are fewer young people in those facilities than any other time in the past and if he had been governor more than a decade ago the Connecticut Juvenile Training School wouldn't have been built.

But it exists and "I think there's more progress that we can make," Malloy added.

Eagan's report comes on the heels of a **report** from Robert Kinscherff of the National Center for Mental Health and Juvenile Justice, a national expert. Kinscherff was contracted by DCF to conduct his own study, and he pointed out some of the same problems with the two facilities. Kinscherff also highlighted a lack of available clinicians during certain times of day:

"A disproportionate number of incidents leading to restraint and seclusion reportedly occur on second shift when there are no clinicians scheduled to be on the units, and the role of clinicians during in-room placements or locked seclusion is reportedly largely limited to quick mental status assessments rather than active access and engagement," he wrote.

Both reports highlight a tension between the mission of the juvenile justice system to rehabilitate boys and girls through therapy, or to incarcerate them.

The report says CJTS is described as a maximum-security facility and has razor-wire barriers and isolation cells.

CJTS and the Pueblo Girls Program cost the state more than \$32 million annually with a projected cost of approximately \$750 per child, per day.

DCF has stated that its vision for juvenile justice intervention is to provide therapeutic programs that rehabilitate youth and increase their chance of success in the community.

# Solitary Confinement: Connecticut

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THE YALE LAW JOURNAL FORUM JANUARY 15, 2016

Worse than Death

Alex Kozinski

Available online:

[http://www.americanbar.org/content/dam/aba/administrative/crsj/deathpenalty/kozi\\_nski\\_yale.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/crsj/deathpenalty/kozi_nski_yale.authcheckdam.pdf)

For decades, lawyers and activists have questioned the constitutionality of our criminal justice system's most severe punishments. Is lethal injection okay?<sup>1</sup> What about a firing squad?<sup>2</sup> How about life sentences for pirates<sup>3</sup> or drug possessors<sup>4</sup> or people who pass rubber checks?<sup>5</sup> But we hear remarkably little about what may be the most severe punishment of all: solitary confinement. Lurking in the shadows of the conversation about inhumane punishments are some 100,000 souls who spend 23 hours a day alone in a cell the size of a parking space. In a world where making a rap video can earn you three years in the box,<sup>6</sup> we should all be asking more questions about how prisoners get into solitary confinement, what "life" is like once they get there, and how they can get out.

The Liman Program's Time-In-Cell Report begins this important conversation. The Report's shuddersome findings confirm what I have long suspected: Solitary confinement is just as bad as the death penalty, if not worse.

There is a growing consensus that criminal justice reform is desperately needed.<sup>7</sup> The difficult question is how best to allocate the scarce resources of lawyers, activists, and academics. I argue here that society should shift some resources and attention away from the death penalty and towards the problem of solitary confinement. If such a shift is not made, death penalty abolitionists may succeed in their campaign only to discover that they have won a Pyrrhic victory. Sending hardened criminals from death row to solitary confinement is no triumph. It merely swaps one type of death for another.

## i. Conditions in the box

Many death penalty abolitionists argue that sentencing murderers to life in prison without the possibility of parole (LWOP) is a preferred alternative.<sup>8</sup> It's better, they say, to put murderers in a place where they'll never be able to hurt anyone ever again. But to accomplish that, LWOP isn't enough. The murderer will have to be sent to solitary, or else he'll be able to injure guards or other inmates.<sup>9</sup> If we abandon the death penalty, most murderers who would otherwise have gotten the needle will instead spend the rest of their lives in the box.<sup>10</sup>

When informed of this alternative, people generally become less supportive of the death penalty. Numerous opinion polls "confirm that abstract support for the death penalty drops significantly when respondents are given a choice between capital punishment and sentences which assure lengthy incarceration and compensation for the family of the victim."<sup>11</sup> Defense lawyers in several recent high-profile murder cases

have tried to convince jurors not to impose the death penalty by arguing that life in solitary confinement may be just as bad. Take, for example, the recent trial of Dzhokar Tsarnaev, one of the Boston Marathon bombers. During closing arguments, Tsarnaev's lawyer argued that the jury should let him live because he was "still going to be in isolation for the rest of his life" at ADX Florence.<sup>12</sup> That super-maximum security ("supermax") prison is the stuff of nightmares. Many inmates at ADX Florence spend twenty-three hours a day alone in an eighty-seven-square-foot cell.<sup>13</sup> Part Alcatraz and part Overlook Hotel,<sup>14</sup> Tsarnaev's lawyer described ADX Florence as a place where "29 men vie for the privilege of cleaning the showers, and two get the job."<sup>15</sup> "This isn't a resort," she told the jury. "A sentence of life [at ADX] is not a lesser sentence than death; it is a sentence other than death."<sup>16</sup>

Placing an inmate in the box for the rest of his life will no doubt prevent him from doing any further harm. But man is a social animal. The human mind craves interaction with other people, and being deprived of human companionship is as damaging to the psyche as deprivation of food and water is to the body. Psychologists now understand that "much of who we are depends on our contact with other people, the social context in which we function, and when you remove people from that context, they begin to lose their very sense of self."<sup>17</sup>

In his recent concurrence in *Davis v. Ayala*, Justice Anthony Kennedy noted that, "despite scholarly discussion and some commentary from other sources, the condition in which prisoners are kept simply has not been a matter of sufficient public inquiry or interest."<sup>18</sup> He emphasized that "consideration of these issues is needed" because "so stark an outcome [as solitary confinement] ought not to be the result of society's simple unawareness or indifference."<sup>19</sup>

Before we decide to swap the death penalty for solitary confinement, we should think long and hard about what we are inflicting on those whose lives we spare. Taking prisoners off death row and putting them in supermax prisons may soothe our collective conscience, but we may be condemning those inmates to decades-long torture that may make a swift execution look like an act of grace.

Many people believe the death penalty is cruel, and it surely is. But the devastating psychological toll of solitary confinement is a beast of its own. The Time-In-Cell Report demonstrates that prisoners subjected to solitary confinement may spend as few as three hours a week outside their cells. And on weekends, they are seldom released at all.<sup>20</sup> The Report also shows us that prisoners confined to the box have limited access to personal property, support services, family visits, and telephone calls.<sup>21</sup> Some of their cells are as small as forty-five square-feet.<sup>22</sup> Others—including many in the Deep South—lack air conditioning.<sup>23</sup> In Missouri, inmates are allotted one shower every three days.<sup>24</sup> Some states prohibit inmates in solitary confinement from keeping photographs of their loved ones.<sup>25</sup>

Given these conditions, it should come as no surprise that "incarceration in solitary cause[s] either severe exacerbation or recurrence of preexisting illness, or the appearance of an acute mental illness in individuals who had previously been free of any such illness."<sup>26</sup> The empirical literature on the effects of solitary confinement is horrifying.<sup>27</sup> It shows that prisoners exposed to solitary confinement become verbally and physically aggressive;<sup>28</sup> develop fantasy worlds and other paranoid psychoses;<sup>29</sup>

and grow anxious, withdrawn, and hopeless.<sup>30</sup> As Justice Kennedy wrote in *Ayala*, “[y]ears on end of near-total isolation exact a terrible price.”<sup>31</sup> One early study found that nearly all of the prisoners in Maine’s isolation unit had either contemplated or attempted suicide.<sup>32</sup> One attempted to swallow the glass from the light bulb in his cell.<sup>33</sup> Another tried twice to hang himself with a sheet.<sup>34</sup> More recent data suggests that prisoners in solitary are five times more likely to kill themselves than those in the general population.<sup>35</sup> “The disparity exists despite the fact that it’s never simple to commit suicide in a bare cell: Some prisoners have resorted to jumping head-first off their bunks; others have bitten through the veins in their arms.”<sup>36</sup>

Given the conditions in solitary confinement and in supermax facilities more generally, it comes as no surprise that some prisoners prefer to die. Timothy McVeigh, who bombed the federal building in Oklahoma City, decided not to seek clemency. McVeigh’s lawyer reported that “[h]aving nothing to look forward to but solitary confinement in a federal penitentiary does not appeal to him.”<sup>37</sup> I encountered a similar prisoner in 1990. Thomas Baal waived his right to appeal his death sentence and asked the district judge to go ahead and “get the ball rolling” on his execution.<sup>38</sup> His parents, claiming their son was incompetent to waive his appeal, sought a stay of the execution from our court. The stay was granted over my dissent. “When we say that a man . . . is not free to choose,” I wrote, “we take away his dignity just as surely as we do when we kill him.”<sup>39</sup> Later that same evening, the Supreme Court lifted the stay.<sup>40</sup> In an essay later published in *The New Yorker*,<sup>41</sup> I described my fitful sleep that night—knowing that I had helped send a man to die. By the time I woke up the next morning, Baal was dead.<sup>42</sup>

## **ii. A shift in priorities**

I don’t mean to short-sell the many problems plaguing our current system of capital punishment.<sup>43</sup> But many more Americans are directly affected by solitary confinement than by the death penalty. There are currently 3,000 prisoners on death row,<sup>44</sup> but as many as 100,000 prisoners are in some form of so-called “administrative segregation,” including at least 25,000 in longterm solitary confinement within supermax prisons.<sup>45</sup> And while the number on death row is shrinking,<sup>46</sup> the number in solitary confinement is expanding.<sup>47</sup> Furthermore, solitary confinement is often imposed on juveniles and the mentally ill—two groups constitutionally immune from capital punishment.<sup>48</sup>

Eighth Amendment challenges to solitary confinement have largely fallen on deaf ears.<sup>49</sup> And due process challenges have fared no better. Although prisoners placed into solitary confinement are entitled to “some kind of hearing,”<sup>50</sup> the Supreme Court has indicated that due process is satisfied so long as prison officials justify their use of solitary confinement through “informal, nonadversary procedures.”<sup>51</sup> Prisoners in long-term solitary confinement will no doubt be thrilled to learn that they too are entitled to “some sort of periodic review.”<sup>52</sup> When compared with the decades-long, multijurisdictional tango that precedes most executions, the “process” afforded to those in solitary confinement seems paltry indeed.

Instead of spending so much time focusing on death penalty litigation, activists might spend some energy agitating for reform in this dank corner of our criminal justice system.<sup>53</sup> There is much low-hanging fruit. The *Time-InCell* Report notes, for example,

that legislation limiting the scope and duration of solitary confinement is now pending in many states.<sup>54</sup> The State of New York recently settled a major suit challenging its solitary confinement practices by agreeing to provide better training for officers and educational materials for inmates.<sup>55</sup> Others have pushed different reforms, such as making solitary sentences determinate, limiting the ability to place someone in solitary confinement on the basis of a gang affiliation, and not releasing prisoners directly from solitary into the real world.<sup>56</sup>

The most important contribution of the Time-In-Cell Report may be its finding that prison administrators have breathtaking latitude in imposing housing restrictions.<sup>57</sup> What type of notice and hearing is provided varies from jurisdiction to jurisdiction, but the general story is about what you'd expect: It's easy to get into solitary and hard to get out.<sup>58</sup> In response, some legislators have recently called for the U.S. Department of Justice to promulgate national standards for the placement of prisoners into solitary confinement.<sup>59</sup> This reform—like all of those discussed above—strikes me as decent, sensible, and long overdue.

## **Conclusion**

Reforming the criminal justice system will require us to face its deficiencies head-on. I have written elsewhere that, if we choose to retain the death penalty, we should drop the sanitized ruse of lethal injection and instead face the spatter of executions with open eyes.<sup>60</sup> If we cannot stomach that much, then we shouldn't be in the business of killing folks at all. So too with solitary confinement. You can call it administrative segregation or special housing or a long walk on a sandy beach. But it will always be the box.

*Alex Kozinski is a judge on the United States Court of Appeals for the Ninth Circuit. He acknowledges the nonpareil help of his law clerk, James Dawson.*

# SEGREGATION SEMANTICS

BY RELEASE · PUBLISHED MARCH 21, 2015 · UPDATED NOVEMBER 3, 2015

By Nikki A. Sambitsky

**Available online:** <http://releasenews.org/segregation-semantic-connecticuts-isolation-policy-changes/>

The Connecticut Department of Corrections (DOC) is quietly reviewing its policy for segregating incarcerated people, joining a growing number of states examining alternatives to isolation. A committee of DOC staff and other corrections professionals has been studying the segregation policy for months, though the DOC provided no timetable for a final report. According to Karen Martucci, acting director of the DOC's External Affairs Division, the DOC no longer uses solitary confinement for punishment or self-protection.

"The current Administrative Directive is under review," says Martucci. "I do not want to speculate on any changes that may result in a review of our Administrative Segregation program. It is too premature."

AFSCME Local 1565 Vice President John DeVito claims the DOC has already implemented changes to their segregation policy, including more frequent showers and recreation. The guards' union plans to discuss the policy with the DOC in March, as they are unhappy with the current directive.

"AFSCME wants stricter rules for the inmates because we think [the current regulations] are too lenient. I have been doing this job for 20 years and things change. The inmates have it a lot better than they used to."

Hope Metcalf, executive director of the Orville H. Schell, Jr. Center for International Human Rights and co-teacher at the Lowenstein International Human Rights Clinic at Yale Law School, confirms that any changes the DOC is making to their Administrative Segregation policy are in line with national trends and scientific research indicating the destructive power of isolation.

“There is now widespread recognition among medical and corrections professionals that long term isolation is harmful, expensive, and counterproductive. The two US Senate hearings documented the many costs of solitary confinement. Extreme isolation causes profound disability and exacerbates mental illness...Solitary confinement has no place in a corrections system dedicated to improving public safety,” says Metcalf.

In 2012, Yale Law School’s Visual Law Project produced *The Worst of the Worst*, a documentary detailing the conditions of extreme isolation at Northern Correctional Institution, a supermax prison in Somers, CT, built in the 1990’s alongside many similar institutions across the nation. Metcalf says the team discovered in 2010 that Northern isolated incarcerated individuals for long periods under debilitating conditions.

“Since the documentary’s release, the DOC has made a number of important reforms, including the creation of a step down unit at Cheshire CI, reducing the total number of people in the most severe form of Administrative Segregation, and no longer automatically return[ing] men to isolation upon re-arrest. Our hope is that the DOC will build upon these important steps to see even greater changes long term.”

Metcalf adds that the Connecticut DOC is among a growing number of states that are actively seeking tangible and lasting alternatives to solitary confinement. Colorado has officially abolished isolation for mentally ill people following Colorado DOC Executive Director Rick Raemisch’s night in Administrative Segregation, and New York banned solitary confinement for juveniles in 2014.

“Safety for all people who live and work in prisons must be a top priority, period. But we can no longer afford to think that we can lock people up and make them disappear.”

# **BREAKING FROM A LOCKED-IN PRACTICE: SHRINKING CONFINEMENT IN CONNECTICUT'S PRISONS**

A Yale alumnus speaks about his time in prison.

By ARKA GUPTA

November 17, 2016

Available online: <http://thepolitic.org/breaking-from-a-locked-in-practice-shrinking-confinement-in-connecticuts-prisons/>

**“0-1-A-0-5-3-2, THAT WAS my identity.”**

For 20 consecutive days, George Chochos '16 M.Div. was just one of 80,000 inmates serving in solitary confinement. Depending on their classification, inmates can spend up to 23 hours a day confined to a six-by-nine foot cell. In an interview with *The Politic*, Chochos described the cramped atmosphere of a prison cell.

“Imagine a room being the size of a big closet. When I reached out my hand, and keep in mind I’m only 5’ 7, I could touch both sides of the wall. Being alone with oneself for a long period of time...It’s psychologically draining,” he said. “You could literally start to hear voices, find yourself talking to yourself. You feel like the walls are closing in. You have to redefine reality in a way that allows you to have some defense mechanism against the isolation.”

Chochos, a recent graduate of the Yale Divinity School, has a unique perspective on the issue of solitary confinement. After experiences in prisons such as Sing Sing Correctional and Clinton Correctional (the facility in which he served 20 days in solitary), Chochos finally settled into the higher-education program at Eastern New York Correctional Facility. He was able to pursue a degree through the Bard Prison Initiative, earning a Bachelor of Arts degree in Social Studies. While Chochos has moved beyond what he terms his “traumatic” solitary confinement experience, many inmates across the country still face these conditions.

The Connecticut prison system does not recognize the term “solitary confinement,” instead employing a practice referred to as “administrative

segregation.” Karen Martucci, director for the External Affairs Division of the Connecticut Department of Corrections, clarified the term for *The Politic*.

“The public in general will use the term solitary confinement attached to a variety of definitions. The terminology itself may give a layman person an idea that there is somebody locked away from everyone, that is isolated. We don’t use that in the state of Connecticut,” said Martucci.

In contrast, United States Supreme Court Justice Anthony Kennedy equated the two terms in his concurring opinion in the 2015 case *Davis v. Ayala*.

“Ayala has served the great majority of his more than twenty-five years in custody in ‘administrative segregation’ or, as it is better known, solitary confinement,” wrote Kennedy.

While the relationship between the terms “solitary confinement” and “administrative segregation” differs considerably depending on who you ask, this article will refer to the practice as it is known in Connecticut, administrative segregation.

The Association of State Correctional Officers (ASCA) and the Arthur Liman program at the Yale School of Law recently published a report titled *Time in Cell*. The report offers a new perspective on administrative segregation and details national solitary confinement trends across prisons in the United States.

From the fall of 2011 to the fall of 2014, the median change in the use of administrative segregation for male inmates was a 0.18 percent decrease, as compared to Connecticut, which had a 0.4 percent decrease. Furthermore, Connecticut is one of a handful of states that maintain administrative segregation rates under 1 percent for male inmates. Seemingly at the forefront of administrative segregation reform, Connecticut is addressing this old issue in a new manner. Different sources debate whether the Connecticut prison system has been ahead of the reform curve, or if there is still room for improvement.

In addition to profiling the Connecticut prison system, *Time in Cell* collected data from 47 jurisdictions across the country in order to gauge consistency in policies regarding placement of inmates into administrative segregation. President Barack Obama cited the *Time in Cell* report last January in a Washington Post op-ed titled “Why we must rethink solitary confinement.” A Department of Justice report also used the data in addressing prison reforms for which Obama advocated.

“Many states were ahead of federal reforms,” said Judith Resnik, Arthur Liman Professor of Law at Yale Law School and a contributing author of the report. Resnik told *The Politic* that the ASCA-Liman report was an important step in what she described as “a long series of projects meant to reduce the number of people in solitary confinement.”

According to the report, many policies focused on criteria for entering administrative segregation, but few focused on procedures for leaving. Prisons profiled in the report varied in their standards of what behavior qualifies a sentence of administration segregation. The report also found inconsistencies regarding the person responsible for determining the ultimate placement of the inmate. Most prisons agreed that administrative segregation was a useful tool to protect the general prison population.

Many prison officials in the state of Connecticut share this attitude. Rudy Demiraj, president of the local American Federation of State, County and Municipal Employee Union (AFSCME), which includes prison correctional officers, believes that the practice is important for inmate safety.

“The intent of administrative segregation is to separate the most violent inmates from the general prison population. It’s a tool used to keep other inmates safe,” said Demiraj in an interview with *The Politic*.

Martucci listed behaviors that would make an inmate worthy of placement into administrative segregation, such as assault on a staff member, fighting with other inmates, or use of a homemade weapon. The practice of segregation for violent inmates in the state of Connecticut coincides with larger national trends.

“The prevailing narrative is one where solitary confinement can be used in instances of clear physical danger,” Korinayo Thompson ‘18, Advocacy Chair and Director of Outreach for the Yale Undergraduate Prison Project (YUPP) said in an interview with *The Politic*. “[But] even in those cases, it does harm to the individual being isolated.”

YUPP is a student group dedicated to a variety of reforms for the criminal justice system, which includes advocating against administrative segregation as a prison tactic. The organization tasks itself with raising awareness for those experiencing administrative segregation. It launched its inaugural demonstration in 2014. For 23 hours, students occupy a taped-off area equivalent in dimensions to an administrative segregation cell. Demonstrators remain silent, seated patiently for the duration of their “sentence.” Through this

silent demonstration, YUPP members attempt to raise awareness for inmates enduring sentences in restrictive housing.

“This demonstration is a reminder to the community at large that there is an individual living on the margins, subjected to what many believe to be cruel and unusual punishment,” said Thompson.

Groups like YUPP have been active in attracting attention from the media, the government, and prison officials alike, by publicly demanding that they address issues with administrative segregation.

In recent years, prison officials have actually reached out to outside parties in order to cooperatively confront the issue of administrative segregation—*Time in Cell* is one example of this phenomenon. The report’s collaborator, the ASCA, is an organization composed of the directors of state prison systems and the federal system, as well as of some major city jails. *Time in Cell* reflects how prison administrators have joined with academics and others to limit the use of solitary confinement, administrative segregation, or—as many prisons call it—“restrictive housing.” ASCA established a committee specifically tasked with addressing segregated housing in 2012, and in 2013, it adopted guidelines limiting the use of restrictive placements.

“People who run prisons have come to understand that large numbers of people in extended restricted isolating conditions is now a grave problem to be solved. In the past, the sense was that placing people into such settings was a solution to a problem,” said Resnik.

While administrative segregation was once thought of as the ideal answer to the question of troublesome inmates, it now has a negative reputation that both prison administrators and prison reform advocates are trying to address.

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Administrative segregation originated in the 19th century, when Anglicans and Quakers sought to establish a new reform system that was, in their view, more humane than the conditions of overcrowded prisons. In 1829, they opened Eastern State Penitentiary, constructed solely of single cells meant for isolation. In theory, this separation would permit inmates to reconcile their crimes with God and seek penitence (hence the term penitentiary).

Instead, isolation drove many inmates insane.

When renowned author Charles Dickens visited Eastern State Penitentiary, he was aghast by the conditions of the men he witnessed.

“I believe it...to be cruel and wrong...I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body,” said Dickens.

After suffering through the administrative segregation experience, George Chochos is painfully familiar with the full extent of mental health deterioration associated with it.

“It’s a form of PTSD. It really is,” he said.

Countless scientific studies have warned against administrative segregation due to the psychosocial distress entailed. Dr. Atul Gawande, renowned public health expert, published an article in *The New Yorker* which argues that social isolation tentatively leads to a loss of interactional skills. In the article, Gawande makes a connection between the treatment of United States inmates in administrative segregation, and United States prisoners of war subjected to the treatment of violent hostiles; both experience a deterioration of social skills due to isolation.

Gawande adds that prisoners in administrative segregation “begin to lose the ability to initiate behavior of any kind—to organize their own lives around activity and purpose.”

With leading scientists decrying the detrimental psychosocial effects of administrative segregation, how does Connecticut’s correctional program view it?

According to Demiraj, the Connecticut administrative segregation program varies significantly from those of other states.

“That’s not the case in Connecticut,” said Demiraj when asked if Connecticut inmates are suffering from this psychological affliction. “The inmates have clear contact with other inmates on a daily basis, and are allowed to interact with other inmates in this program.”

In fact, Demiraj argued that the educational programming and resources available to these inmates are immensely beneficial, to the point that, he says, many inmates choose to stay in administrative segregation.

Meanwhile, Martucci acknowledged that a restrictive environment is not optimal for integration back into society.

“The review process is not an automatic placement,” said Martucci. “We have a hearing, and review the inmate for the placement. One of the biggest pieces is a full psychological exam.”

Inmates in the program also progress through a phased system, which includes educational programming meant to reduce violent behaviors.

The educational programming referenced by both Demiraj and Martucci is a curriculum designed for inmates in administrative segregation, meant to reduce violent tendencies and better prepare inmates for reintegration back into society.

However, the presence of educational programming for inmates does not guarantee full participation. For example, the *Time in Cell* data highlights instances in which multiple prison systems reported less than 25 percent participation. Additionally, while the programming includes chances for group interaction, a significant portion consists of in-cell education, which limits contact with others.

In contrast, the educational programming for the general prison population yields high participation rates with opportunities to interact with peers as well as teachers. Projects such as the Bard Prison Initiative allow prison inmates to pursue a higher education degree through Bard College. For attainment of a high school GED, tutoring is offered, often in conjunction with volunteer groups like YUPP.

Prison officials and reform advocates agree that education has been shown to improve inmates’ prospects of re-entry into society.

Chochos claimed that during his tenure in Bard Prison Initiative, the higher-education program through which he received his B.A., the classroom was, “[the] only place where our humanity was validated.”

Not only did this program significantly improve his sentence, but it prepared him for reintegration into society. Chochos said that his educational opportunities during confinement significantly eased his transition to divinity school.

Increased educational possibilities for inmates in administrative segregation provide a chance to ease their prison experience as well as an exposure to opportunities that might otherwise have been inaccessible.

The purpose of the criminal justice system to many prison administrators and reform advocates alike is the rehabilitation of inmates into functioning members of society, and a redefinition of their view of themselves and their role in their communities. For Chochos, that redefinition occurred in the classroom.

“Being exposed to some of the major works in Western Civilization, I saw myself as a citizen in a new way”, he said.

He reintegrated into society with a new identity. Not as an ex-offender, not as 0-1-A-0-5-3-2, but rather, as a student vital to his community.

# Connecticut Decreases Use Of Solitary Confinement In Prisons

**Daniela Altimari**

**October 19, 2015**

**Available online:** <http://www.courant.com/news/connecticut/hc-solitary-confinement-connecticut-1018-20151019-story.html>

The solitary confinement unit at Northern Correctional Institution in Somers consists of a dense warren of cells along a narrow corridor with low ceilings and an absence of natural light. Former inmates say the eerie quiet is punctured only by the sounds of prisoners screaming, cursing and throwing themselves against steel doors.

It is, says one man who spent two-thirds of his three-year sentence there, the lowest dungeon in the castle.

But these days, the dungeon is increasingly likely to be empty because Connecticut has significantly curtailed its use of solitary confinement.

The practice of isolating problematic prisoners for extended periods of time peaked in 2003, when 244 inmates were held in solitary units.

As of mid-October, 52 inmates were being held in solitary confinement in Connecticut prisons, according to Department of Correction spokeswoman Karen Martucci.

Connecticut's retreat from solitary confinement is in step with a larger movement, led by activists, legal scholars and even some correctional administrators who have come to view the practice as inhumane.

"There's a trend nationally ... across the political spectrum, related to limiting isolation," said Judith Resnik, a Yale Law School professor and co-author of a new study on solitary confinement in U.S. prisons.

California, which has the nation's largest prison population, agreed in August to move thousands of prisoners out of solitary confinement as part of a legal settlement. More than a dozen states are considering legislation placing new limits on solitary confinement, especially for juveniles, the mentally ill and other vulnerable groups of inmates. And in July, President Barack Obama ordered the Justice Department to review solitary confinement in federal prisons.

In Connecticut, Gov. Dannel P. Malloy has made criminal justice reform a cornerstone of his second term in office. His Second Chance initiative reduces the penalties for some drug crimes, establishes a speedier parole process for nonviolent offenders and provides money for job-training and housing for prisoners upon their release.

While Malloy's plan does not address the issue of solitary confinement, the Department of Correction has quietly changed a number of policies relating to the practice through administrative directives over the past few years. It has instituted a two-tiered system that emphasizes rehabilitation and offers incentives to change behavior. (Martucci and other correction officials reject the term "solitary confinement," calling it "misleading." The department prefers the term "administrative segregation.")

Those changes have won the department and Commissioner Scott Semple praise from prison reform advocates.

"It's easy to dump people at Northern," said David McGuire, legislative and policy director at the American Civil Liberties Union of Connecticut. "The commissioner has changed the regulations significantly. He understands that it's not productive to keep people in solitary for long periods of time. It's an extremely traumatic experience."

More changes may be coming: Semple plans to reconvene a departmental panel on administrative segregation to consider additional policy revisions, Martucci said.

McGuire and other advocates are pressing for those new policies to be enshrined in statute, just as New York and other states have done. He hopes lawmakers will consider legislation further restricting solitary confinement next year.

But some correction officers fear the pendulum has already swung too far.

"In Connecticut, we've had a substantial change in the administrative segregation program," said Rudy Demiraj, who works at Cheshire Correctional Institution and is president of the union representing correction officers. "It's more of a watered-down version of what administrative segregation used to be and that does pose some problems for frontline staff members."

Prison systems that have loosened the rules regarding solitary confinement have seen a spike in violence directed at correction staff, Demiraj said.

"It's easy to sit in the safety of an office and say these tools aren't necessary, but I would offer anyone to come into the facilities and see the types of violent behavior that some of these inmates display," he said. "Then they would certainly see what an important tool administrative segregation is."

### **Supermax Building Boom**

Solitary confinement has deep roots in the American penal system. One notorious example was the infamous D-block at Alcatraz, where prisoners were locked in their cells, sometimes in total darkness, for days on end.

But it wasn't until the rise of supermax prisons in the late 1980s and early 1990s that the practice of keeping inmates isolated for long periods became widespread.

Under President Bill Clinton, who took a hard line on criminal justice matters, drug sentences grew harsher, police cracked down on gangs and the federal government subsidized a prison-building boom. Dozens of states, including Connecticut, built state-of-the-art prisons with free-standing isolation units.

"A perfect storm of plenty of money, war-on-crime politics and the myth of the super predator ... all collided to produce this new form of incarceration," said Hope R. Metcalf, executive director of the Orville H. Schell Jr. Center for International Human Rights at Yale Law School. "It was supposed to make us safer."

Instead, Metcalf and other reform advocates assert, the harshness of the solitary confinement unit has made prisons more dangerous. And it left inmates ill-equipped to handle the everyday strains and stresses of life on the outside after their release.

Then there's the cost. "It is an enormously expensive form of incarceration," Metcalf said. "The state budget crisis and the withdrawal of federal funds has created a crack in the correctional edifice and prompted people to take a hard look at where money was being spent."

In 2012, Metcalf worked with the Yale Visual Law Project, which produced a 30-minute documentary on life inside Northern Correctional Institution.

"People were being placed in solitary for relatively minor infractions," she said. "People who were in for shoplifting, or parole violations ... would have an incident and collect minor disciplinary tickets for mouthing off to correction officers. Then, when they would deteriorate due to pre-existing mental health issues ... they would get stuck there."

Metcalf credited the Department of Correction for taking steps to address some of the problems documented in the film. "From a numbers perspective, Connecticut is doing much better than it was," she said. "The current leadership [at the Department of Correction] understands that solitary should be a last resort and for the shortest period of time ... that is the biggest change."

But, she added, "I hesitate to say much has changed inside Northern. It's still a harsh environment and there's still nothing of any value offered to the men who live there in solitary."

In Connecticut, a top administrator — the director of population management for the entire system — must sign off before an inmate is placed in administrative segregation, Martucci said. The inmate also must undergo a mental health screening.

Connecticut's tiered system is designed to create incentives for inmates. Those in the more restrictive phase one are housed at Northern. "You still get recreation, you still get

showers, you still get phone calls, but not at the duration you normally would," Martucci said.

Those privileges increase in phase two and phase three, which are both at Cheshire Correctional Institution. For instance, instead of one 15-minute phone call per week, as is permitted in phase one, inmates in phase two receive two 15-minute calls and those in the third phase receive three. Access to showers and recreation and visits from family members also increase.

Inmates in administrative segregation can participate in various programs that aim to reverse negative behaviors and encourage positive interactions in preparation for release back into the general population, Martucci said. There are sessions on anger management, relapse prevention and "how to do your bid," among others. The department has also moved away from releasing prisoners directly into their communities from the most restrictive phase of solitary confinement.

But it has not done away with the practice. "Out of a population of 16,000 inmates, there are some inmates that are very difficult to manage," Martucci said. "The numbers are low ... but they're very disruptive. ... They are dangerous inmates and there has to be a place for those inmates, because we have to protect our staff and other inmates."

"There's no disagreement that there is a need for high level supervision," she added. "It's just a question of who belongs there and for how long."

# **Solitary Confinement: National**

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## **Movement to End Solitary Confinement Gains Force**

BY ELIZABETH CHUCK

MARCH 1, 2014

**Available Online:** <http://www.nbcnews.com/news/us-news/movement-end-solitary-confinement-gains-force-n38521>

In the small, dark world of solitary confinement, an inmate's basic needs can go neglected for months — and many are starting to wonder for what purpose.

For Jan Green, 52, who spent eight months sleeping on a thin mat on the floor of a New Mexico jail cell about 7 feet wide and 7 feet long, being in isolation meant no access to basic necessities like sanitary napkins. It meant no exercise, no human contact, no medicine, and barely any running water.

"I had a metal toilet and sink, and couldn't get the water to work properly, so I rarely could wash my hands or get a drink of water or brush my teeth," said Green, who landed behind bars on domestic violence charges — charges that were ultimately dismissed.

Green was in solitary confinement at the Valencia County Detention Center in Los Lunas, N.M., where she says a nurse failed to report her psychiatric problems and corrections officers refused to give her any time out of her single-window cement block, day after day. (Standard treatment for solitary inmates includes one to two hours each day outside of their cells.)

Last month, Green, who has been out of jail since February 2012, settled a lawsuit with Valencia County for \$1.6 million. Diagnosed with bipolar disorder before her arrest, she said her time in solitary pushed her into a state of psychosis that still haunts her from time to time, despite receiving treatment after getting out.

"It's kind of wormed its way into all aspects of life," said Green, who now lives in Minnesota with her daughter. "It's a daily struggle."

Solitary confinement, and its long-term effects on inmates, have pushed to the front of the nation's conscience in recent weeks. The questionable treatment that inmates are forced to endure for days, months, years or even decades while in solitary, not to mention its high financial cost, have come under fire, as has its effectiveness: Advocates argue it actually increases rates of recidivism for those released back into society.

It's unclear how many inmates in the U.S. are being held in solitary confinement, partially because detention centers don't always share those statistics. But experts estimate the number is somewhere around 80,000. The cost to house an inmate in solitary ranges from state to state, but it typically ranges between \$70,000 and \$80,000 per year — significantly more than it costs to house someone in a prison's general population.

Sen. Dick Durbin, D-Ill., who leads the Senate Subcommittee on the Constitution, Civil Rights and Human Rights, announced in early February that the Federal Bureau of Prisons will conduct its first-ever review of the use of solitary confinement in federal prisons across the nation. On Tuesday, he held a Senate Judiciary hearing on solitary confinement, calling for tighter rules on how long juveniles, pregnant women, and the mentally ill could be held in solitary.

The move follows states conducting their own assessments of whether solitary is overused in state-run detention centers. New York state was the most recent to enact changes, two weeks ago becoming the largest prison system to curb solitary confinement for vulnerable inmates such as those who are pregnant or mentally ill, and set limits on the maximum amount of time inmates could be in solitary.

Many other places, including Maine, Connecticut, Illinois, Texas and Mississippi, have revamped or reformed their solitary confinement policies in recent years. California, which has high levels of prisoners in solitary, may be the next battleground: A case brought by the Center for Constitutional Rights, a human rights organization, against the state for its use of prolonged solitary confinement in the notorious Pelican Bay prison will go to trial in November.

"The trend right now is to recognize that solitary is both an economically wasteful and harmful method for prisons to operate," said Jules Lobel, president of the Center for Constitutional Rights and a professor at the University of Pittsburgh.

Colorado, too, is looking to drastically reduce or entirely eliminate the use of solitary confinement, especially for mentally ill inmates — who comprise at least a third to a half of those held in isolation nationwide, according to David Fathi, the director of the American Civil Liberties Union National Prison Project. Rich Raemisch, the new executive director of the Colorado Department of Corrections, recently spent 20 grueling hours in a solitary cell to get a better understanding of it, and left with "even more urgency for reform."

The agonizing experience is hard for anyone, but for the mentally ill, it can be deadly.

"They suffer tremendously and break down and get worse, and often commit suicide when they're subjected to the stress of solitary confinement," Fathi said.

More than 95 percent of those held in solitary — mentally ill or not — are eventually released back into their communities. Fathi cited a Washington state prison study that

found solitary confinement had higher recidivism rates than comparable prisoners who hadn't been held in solitary.

"It doesn't make people better," he said.

While most advocates say a very, very small percentage of inmates are truly too dangerous not to be in solitary — Colorado's Raemisch testified on Tuesday that he thought out of his state's entire prison system, he believed four people belonged in isolation — they believe there are alternatives.

One option for punishment is taking away privileges, said Peggy McGarry, director of the Center on Sentencing and Corrections at VERA Institute of Justice, a nonpartisan non-profit research and technical assistance organization.

"You can't go the dining hall to go to the meals and see your friends. Your meal will be served in your cell for a week. Or you're not allowed to have that family visit that was planned two weeks from now. Or your library time is being taken away for a period of time," she said.

She also proposed just using solitary as a timeout - less than 24 hours - which is done in other countries, such as Germany, which uses solitary sparingly and for no more than 8 hours at a time.

Green, the woman held in solitary in New Mexico, hopes it's abolished entirely.

"I don't think it's healthy for anybody to sit in a little cell and depend on the guards for their every need and just have hour upon hour of silence. Your mind does terrible things when you're in there," she said. "It was miserable."

# Obama bans solitary confinement for juveniles in federal prisons

Juliet Eilperin

January 25, 2016

Available online: <http://www.chicagotribune.com/news/nationworld/ct-obama-solitary-confinement-juveniles-20160125-story.html>

President Barack Obama on Monday announced a ban on solitary confinement for juvenile offenders in the federal prison system, saying the practice is overused and has the potential for devastating psychological consequences.

In an op-ed that appears in Tuesday editions of The Washington Post, the president outlines a series of executive actions that also prohibit federal correction officials from punishing prisoners who commit "low-level infractions" with solitary confinement. The new rules also call for expanding treatment for mentally ill prisoners.

The president's reforms are expected to affect about 10,000 inmates.

The reforms come six months after Obama, as part of a broader criminal-justice reform push, ordered the Justice Department to study how solitary confinement was being used by the federal Bureau of Prisons.

The move is another example of the extent to which the nation's first African American president now seems willing to tackle delicate questions of race and criminal justice as he closes out his presidency. Obama has also been focused on trying to put in place programs to help ex-offenders reintegrate into society once they have left prison.

"How can we subject prisoners to unnecessary solitary confinement, knowing its effects, and then expect them to return to our communities as whole people?" the president wrote in his op-ed. "It doesn't make us safer. It's an affront to our common humanity."

He said he hoped his reforms at the federal level will serve as a model for states to rethink their rules on the issue.

At least a dozen states have taken steps in the past two years to curtail the use of solitary confinement, either in response to lawsuits or through legislative and administrative changes. An increasing number of studies show a connection between isolating prisoners and higher rates of recidivism.

In recent weeks, Illinois and Oregon, in response to lawsuits, have announced they will exclude seriously mentally ill inmates from solitary confinement, and last month New York state reached a five-year, \$62 million settlement with the New York Civil Liberties Union in which it pledged to significantly cut the number of prisoners in solitary as well as the maximum time they could stay there. California reached a settlement in September, pledging to overhaul the way it treats almost 3,000 inmates who are frequently kept alone for more than 22 hours a day in their cells.

Amy Fetting, senior staff counsel at the American Civil Liberties Union and director of the group's Stop Solitary Campaign, said in an interview that the Bureau of Prisons "has lagged behind a number of the states in reforming solitary confinement and in restricting its use and abuse."

"It's absolutely huge," Fetting said of Obama's decision to change the way the federal system isolated inmates. "We rarely have presidents take notice of prison conditions."

While Obama is leaving the details of policy implementation to agency officials, the Justice Departments report includes "50 guiding principles" that

all federal correctional facilities must now follow. They include increasing the amount of time inmates placed in solitary can spend outside of their cells; housing prisoners in the "least restrictive setting necessary" to ensure their safety and those of others; putting inmates who need to be in protective custody in less-restrictive settings; and developing policies to discourage putting inmates in solitary during the last 180 days of their terms.

A congressionally mandated audit of restrictive housing in federal prisons, published last year by the Center for Naval Analyses, found that roughly 60 percent of the inmates whose solitary cases were reviewed had serious under-diagnosed or untreated mental illnesses. That study also found that many individuals put in protective custody for their own safety, including prisoners who are lesbian, gay, bisexual and transgender or who are disabled, were regularly placed in solitary confinement.

Some of the states that championed reforms early, including Washington state, have found that prisoners placed in restrictive housing - especially just before their release - are more likely to be repeat offenders. One study found that Washington state prisoners who were confined in solitary had a 20 to 25 percent higher recidivism rate than those in less-restrictive housing, and that those who spent time in solitary directly before reentering society were more likely to commit violent crimes.

Inimai Chettiar, who directs the Justice Program at New York University Law School's Brennan Center for Justice, said in an interview that many Americans historically have not been focused on how inmates are punished or treated once they're in jail.

"People think, 'Okay, that's prisoners, who cares?' " she said. "In recent years it has come to light that not only is solitary confinement not good for prisoners, but it has really negative effects on both recidivism and the crime rate."

Kevin Ring, vice president of Families Against Mandatory Minimums, served 15 months in federal prison on fraud charges in connection with a scandal surrounding GOP lobbyist Jack Abramoff. He spent two days in solitary in October because of a scabies outbreak in a Cumberland, Maryland, facility. Although the isolation was not designed to punish the inmates, Ring said guards took away all his possessions - including paper and pen - and put in a small cell with just a metal bed, shower and small window. The lack of human contact was the most disorienting part, he said, since guards pushed a tray of food through a slot at assigned meal times and he could "only hear voices down the hall" for the entire period.

"I don't know how people do it. I'm not solitary material," Ring said, adding that it should be used only "as a last resort."

As many as 100,000 state and federal prisoners are held in solitary confinement in the United States at any given time, according to the White House, and several states have taken steps recently to curtail its practice.

The president began his op-ed by recounting the story of 16-year-old Bronx resident Kalief Browder, who was sent to Rikers Island in 2010 to await trial after stealing a backpack. He "spent nearly two years in solitary confinement," Obama wrote. Browder was released in 2013 but committed suicide at 22.

"Today, it's increasingly overused on people like Kalief, with heartbreaking results - which is why my administration is taking steps to address this problem," Obama wrote. "In America, we believe in redemption."

## **Video Resources**

# Videos

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IS SOLITARY CONFINEMENT TORTURE? EXONERATED DEATH ROW INMATE OPENS UP ABOUT “ANIMAL” PRISON TREATMENT (VIDEO)

**Viewable online:** <http://www.huffingtonpost.com/2012/11/09/is-solitary-confinement-torture-2101895.html>

“It was hell. It was torture every day,” said Anthony Graves, an exonerated death row inmate and activist, of the almost ten years he spent in solitary confinement. Graves opened up about the personal horror he faced in solitary during an interview with host Alyona Minkovski on HuffPost Live.

“You’re caged in like an animal. You’re in a little eight-by-twelve foot cage, and you’re just existing. You’re existing behind some inhumane conditions. So it was hell every day.”

Researchers from the federal Bureau of Justice Statistics estimate that there are 80,000 prisoners currently being held in restrictive housing in the United States. Many activists and experts believe that by human rights standards, solitary confinement is tantamount to torture.

“It breaks your will to live. It breaks your spirit,” Graves said. “I don’t think you can get anything positive out of that.”

Joining Graves and Minkovski to discuss whether solitary confinement is a form of torture were Andy Stepanian, a publicist at the Sparrow Project and HuffPost blogger, Azadeh Zohrabia, a Soros Justice fellow whose brother is currently in solitary confinement, Bonnie Kerness, the founder of American Friends Service Committee, and Shane Bauer, an investigative journalist.

## National Geographic Explorer solitary confinement video

Viewable online: <http://channel.nationalgeographic.com/explorer/episodes/solitary-confinement/>

Today, more than 80,000 Americans are in solitary confinement. Explorer looks at the science of solitary and discovers what it means to be absolutely alone. We go inside Colorado State Penitentiary (CSP) and witness prisoners on the edge and the guards who watch over them. Then, we look at experiments on whether isolation dramatically alters behavior and ongoing new research on how solitary actually could cause long-term mental problems like paranoia, disorientation and delirium.

## **Additional Investigative Reports**

## Investigative reports

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State of Connecticut, Office of the Child Advocate. Investigative Facility Report Connecticut Juvenile Training School and Pueblo Unit. July 22, 2015. Accessible Online: [http://www.ctnewsjunkie.com/upload/2015/07/OCA\\_INVESTIGATIVE\\_CJTS-PUEBLO\\_REPORT\\_JULY\\_22\\_2015\\_00000004.pdf](http://www.ctnewsjunkie.com/upload/2015/07/OCA_INVESTIGATIVE_CJTS-PUEBLO_REPORT_JULY_22_2015_00000004.pdf)

Tow Youth Justice Institute, University of New Haven. Connecticut's Juvenile Justice System,: Progress and Challenges for 2016 and Beyond. March 2016. Accessible Online: <http://www.newhaven.edu/1010897.pdf>

Vera Institute of Justice. Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives. May 2015. Accessible Online: [http://archive.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report\\_1.pdf](http://archive.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf)

Sarah Schnitman, Connecticut College. 'The Hole' Exposed: Voices on Solitary Confinement in the American Prison System. 2014. Available Online: <http://digitalcommons.conncoll.edu/cgi/viewcontent.cgi?article=1009&context=anthrohp>

## **ACLU Resources**

## **ACLU Resources**

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The American Civil Liberties Union has compiled a list resources pertaining to the study and use of solitary confinement in the United States. These resources can be accessed online at the below link. Topics covered include: Videos and Films, Advocacy Organizations, Standards and Resolutions, Legislation and Policy Reform, International Resources, Litigation Documents and Legal Analysis of Solitary Confinement, Alternatives, Violence and Public Safety Impacts, Cost Issues, Solitary Confinement of Youth, Mental Health Effects of Extreme Isolation, and Solitary Confinement and Supermax Prisons-General Information.

**<https://www.aclu.org/files/assets/Solitary%20Confinement%20Resource%20Materials%202012%202017%202013.pdf>**